Title IX for All

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Full Comment of Jonathan Taylor
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Presented to the U.S. Department of Education, Office for Civil Rights
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My name is Jonathan Taylor, founder of Title IX for All and a former A&M instructor. Title IX for All was founded to raise awareness of bias and threats to civil liberties in academic institutions on the basis of sex, connect aggrieved students and families with helpful professionals and advocates, and advocate for positive change. Our website is home to the Title IX Legal Database, a comprehensive clearinghouse of lawsuits by accused students which now exceed seven hundred.[1][2]

The points addressed in this document will be divided into these sections:

1. Fundamental Provisions as Supported by Established Law
2. Proposed Changes
3. Statistical Evidence and the 2020 Regulation's Effectiveness
4. Further Examples of Abuses Incurred by Lack of 2020 Regulations
5. Lawsuits Resulting in Favorable Decisions for Accused Students
6. Closing Thoughts

[1] Title IX for All, Title IX Legal Database.
[2] KC Johnson, Post Dear-Colleague Letter Rulings/Settlements.

Fundamental Provisions as Supported by Established Law

Lawsuits by accused students exploded following the 2011 Dear Colleague letter. In the following years, opinions by judges well-balanced across the political spectrum, male and female[3], presiding over appellate and lower state and federal courts, and of every creed and color have denounced the lack of due process, gender bias, and other deprivations of rights in higher ed Title IX grievance processes.

Some of the most impactful decisions support specific provisions in the 2020 regulations, and we strongly recommend they be kept. They are as follows:

1. Live Hearings
2. Cross-Examination
3. Timely and Meaningful Notice
4. Neutral and Unbiased Title IX Personnel
5. The Definition of Sexual Harassment

I will discuss these in more detail below.

Live Hearings

Live hearings are required by postsecondary institutions per §106.45(b)(6)(i). Like many provisions of the regulations, this finds its basis in established law. In Doe v. Cincinnati (2017)[4], the Sixth Circuit said this about live hearings:

> *The Due Process Clause guarantees fundamental fairness to state university students facing long-term exclusion from the educational process. Here, the University's disciplinary committee necessarily made a credibility determination in finding John Doe responsible for sexually assaulting Jane Roe given the exclusively "he said/she said" nature of the case. Defendants' failure to provide any form of confrontation of the accuser made the proceeding against John Doe fundamentally unfair.*

Court decisions generally follow this principle regarding due process: the greater the deprivation of liberty or property, the greater the process due to determine guilt. This is why, when life-altering accusations of a severe type (sexual assault, dating violence, etc.) are made against a student, more rigorous procedures are required to determine the truth of the matter.

This goes both ways, however. On the other end of the spectrum, when the level of punishment is not severe - such as a written reprimand instead of expulsion for behavior that does not constitute assault or threats - courts have found that

[3] See especially *Doe v. Purdue,* in which a panel of three female judges unanimously referred to Purdue's process as a sham. Now-SCOTUS Justice Barrett's pathbreaking ruling substantially altered the path for Title IX litigation going forward.
[4] United States Court of Appeals, Sixth Circuit, *Doe v. University of Cincinnati*.

procedures like a live hearing are not required. A California appellate court ruled as much in *Knight v. South Orange Community College District* (2021): "We have found no published cases holding that a student is entitled to this level of due process [live hearings] before receiving a written reprimand."[5]

Cross-Examination

Like live hearings, cross-examination is required by postsecondary institutions per section §106.45(b)(6)(i). Cross-examination, as well as the requirements for live hearings and neutral factfinders, was made clear in the following appellate court decisions on both the state and federal level.

In *Doe v. Cincinnati* (2017), the Sixth Circuit said this about cross-examination:

> *We are sensitive to the competing concerns of this case. "The goal of reducing sexual assault[] and providing appropriate discipline for offenders" is more than "laudable"; it is necessary. Brandeis, 177 F. Supp. 3d at 572. But "[w]hether the elimination of basic procedural protections—and the substantially increased risk that innocent students will be punished—is a fair price to achieve that goal is another question altogether." Id.*
>
> *Here, John Doe's private interest is substantial, and the risk of erroneous deprivation under the procedures UC followed at his ARC hearing is unacceptably high. Allowing defendants to pose questions to witnesses at certain disciplinary hearings may impose an administrative burden on UC. Yet on the facts here, that burden does not justify imposition of severe discipline without any credibility assessment of the accusing student.*

In *Doe v. Baum* (2018)[6], the Sixth Circuit likewise found as follows:

> *If a public university has to choose between competing narratives to resolve a case, the university must give the accused student or his agent an opportunity to cross-examine the accuser and adverse witnesses in the presence of a neutral fact-finder.*

State court decisions, including the California Court of Appeal, have also ruled cross-examination as necessary. One such example is *Dixon v. Kegan Allee* (2019)[7]:

> *When a student accused of sexual misconduct faces severe disciplinary sanctions, and the credibility of witnesses (whether the accusing student, other witnesses, or both) is central to the adjudication of the allegation,*

[5] California Court of Appeal, Fourth Appellate District, *Knight v. South Orange Community College District.*
[6] United States Court of Appeals, Sixth Circuit, *Doe v. Baum*.
[7] California Court of Appeal, Second Appellate District, *Doe v. Kegan Allee et al*.

> *fundamental fairness requires, at a minimum, that the university provide a mechanism by which the accused may cross-examine those witnesses, directly or indirectly, at a hearing in which the witnesses appear in person or by other means (such as means provided by technology like videoconferencing) before a neutral adjudicator with the power independently to find facts and make credibility assessments. USC's disciplinary review process failed to provide these protections and, as a result, denied Doe a fair hearing.*

It is important to note that decisions supporting cross-examination were made regardless of whether the university is public or private. The natural question would be whether due process – a Constitutional right – should be provided in the context of a private university. In *Dixon v. Kegan Allee*, ruling against the University of Southern California (a private university), the Court also concluded that, "For practical purposes, common law requirements for a fair disciplinary hearing at a private university mirror the due process protections at public universities."

This ruling makes clear that even when certain procedures are not required by due process as a Constitutional right, they are often found in other legal provisions. Similarly, in *Doe v. University of the Sciences* - a recent Third Circuit Decision regarding a private university – found that such protections are required under basic fairness:[8]

> *Basic fairness in this context does not demand the full panoply of procedural protections available in courts. But it does include the modest procedural protections of a live, meaningful, and adversarial hearing and the chance to test witnesses' credibility through some method of cross-examination.*

Additionally, the Court found that:

> *USciences did not provide Doe a real, live, and adversarial hearing. Nor did USciences permit Doe to cross-examine witnesses—including his accusers, Roe 1 and Roe 2. As we explained above, basic fairness in the context of sexual-assault investigations requires that students accused of sexual assault receive these procedural protections. Thus, Doe states a plausible claim that, at least as it has been implemented here, the single-investigator model violated the fairness that USciences promises students accused of sexual misconduct.*

Timely and Meaningful Notice

This provision is found in §106.45(b)(5)(vi) of the 2020 regulations. Accused students must be given timely and meaningful notice in the following respects:

1. Accused students should be informed in writing of the charges against them, including the specific name of the offense (as opposed to a general "violation

[8] United States Court of Appeals, Third Circuit. *Doe v. University of the Sciences*.

of the misconduct policy") a description of the alleged incident, the name of the accuser, and the best-known date when the alleged incident occurred.

2. Before the hearing, both parties should be granted the opportunity (including the time) to review all the evidence regarding the accusation, regardless as to whether the investigator deems it relevant (to provide the opportunity for the parties to respond if they believe such evidence is relevant). This allows both complainants and respondents the opportunity to build a case in their favor and against the claims made by the other party. The established regulations appropriately provide ten days for this phase.

3. Parties should be given timely notice of meetings and hearings, including both the initial intake meeting. At no point should accused students be summoned to a meeting without being first given notice that they are under investigation. Such "fishing expeditions" do not allow a student sufficient notice to prepare for the seriousness of the meeting or the implications of their statements.

Evidence for these kinds of provisions is found in court decisions. In *Doe v. Purdue,* the accused student was given a few minutes before the hearing to read a redacted version of investigative report containing the summary of evidence against him. To his horror, he learned the report contained both a false confession and an omission of Doe's description of an alleged suicide attempt by his accuser.[9]

In another case, *Matter of Doe v. Rensselaer Polytechnic Institute et al*, we find this criticism of the school's approach from the Foundation for Individual Rights in Education:

> *It is not difficult to see why the interview raised concerns with the court. First, RPI conveniently failed to tell Doe why it needed to interview him in advance. Doe didn't find out about the purpose of the meeting until just before it started, when RPI's interviewers gave him some documents and told him he was the subject of misconduct investigation. If that weren't enough to raise due process concerns, it was also "obvious" to Judge Raymond J. Elliott that there was "a language and a possible cultural barrier" between Doe and RPI's interviewers. So RPI hauled Doe in for questioning without telling him why, sprung a serious charge on him, and failed to ensure that he understood what was going on.*[10]

[9] United States Court of Appeals, Seventh Circuit, *Doe v. Purdue University*.
[10] Foundation for Individual Rights in Education, Rensselaer Polytechnic Institute thinks you're subject to its student conduct policy even if you're not a student.

Neutral and Unbiased Title IX Personnel

As established in §106.45(b)(1)(iii), schools should employ unbiased Title IX personnel throughout the process, whether that person is a decision-maker, an investigator, a "deputy," a coordinator, or any other role that bears relevance to the decision-making process.

Part of that role should be objective and unbiased training that is free of materials that prejudice personnel toward either one sex *or one party* (e.g., the party's status as complainant or respondent). Similarly, pursuant to 106.45(b)(1)(ii), "credibility determinations may not be based on a person's status as a 'complainant' or 'respondent.'"

Additionally, Title IX personnel should not have conflicts of interest that may inhibit them from agreeing or disagreeing with each other. In *Kim v. University of Northern Iowa*, for example, the complaint[11] pointed out the following conflicts of interest:

- An investigator was married to the individual who chaired the hearing panel.
- Individuals held "conflicting, dual roles as Title IX Coordinator, Dean of Students, and, on appeal, the final reviewer of the Hearing Board decision."
- The Hearing Board chair was" also Director of Residence Life, a position that involved work supervision of Jane Roe," the complainant.

In *Doe v. Purdue University*, the investigator who prepared the report for the hearing panel was both an advocate for complainants as the director of a sexual assault victim resource center known as CARE and the school's Title IX Coordinator in charge of compliance.[12] This same person posted on CARE's social media articles with such headlines as "Alcohol isn't the cause of campus sexual assault. *Men are*." The flaws in Purdue's proceedings were manifold: denial of witnesses, false confessions, two members of the hearing panel not even having read the report or even hearing directly from the complainant (yet somehow making a determination in their behalf), refusal to provide copies of the report to the accused, and more.

Writing for a unanimous all-female panel in *Doe v. Purdue*, now-SCOTUS Justice Amy Coney Barrett authored a pathbreaking opinion on gender bias and due process increasingly relied upon in judicial decisions throughout the country.

The Definition of Sexual Harassment

This pertains to §106.30 of the 2020 regulations which, in part, defines sexual harassment by the standard set forth in *Davis v. Monroe County Board of Education* which defined sexual harassment in the Title IX context as follows:

[11] *Kim v. University of Northern Iowa*, Complaint.
[12] United States Court of Appeals, Seventh Circuit, *Doe v. Purdue University*.

> *…cases of student-on-student harassment… where the funding recipient is deliberately indifferent to sexual harassment, of which the recipient has actual knowledge, and that harassment 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.*[13]

Additionally, the 2020 regulations include Clery Act/VAWA offenses such that "a single instance of sexual assault, dating violence, domestic violence, or stalking" also constitutes sexual harassment.

We support this model and strongly recommend it be left in place. It is important to remember that Title IX – and consequently sexual harassment in this context - is fundamentally about access to education, and that if access to education is not a part of the question, it is not a Title IX issue. It is not about a student seeking to punish another student for "that one thing a student said that merely annoyed me that one time," nor policing other students' speech on gender relations, especially in the context of an academic discussion. While all harassment is unwelcome and uncomfortable, not every unwelcome or uncomfortable idea is harassment, and it is especially important for a university – a place where controversial ideas should naturally find a home for discussion and debate - to draw a bright line to distinguish the two.

As we have seen, much of the 2020 Title IX regulations are simply in line with established legal precedent. We recommend the above provisions be left in place. However, there are a few exceptions where we recommend making changes.

[13] Cornell Law School, Legal Information Institute, *Davis v. Monroe County Board of Education et al*.

Proposed Changes

We recommend the following changes:

- Clarification on Evidence not Subject to Cross-Examination
- More Appropriate Standards of Evidence and Punishment

Clarification on Evidence not Subject to Cross-Examination

Under §106.45(b)(6), regarding cross-examination, the 2020 regulations assert that schools "cannot rely on statements of a party or witness who does not submit to cross-examination," including (apparently) inculpatory statements made by respondents in separate criminal proceedings or exculpatory text messages by complainants. This seems unfair to both parties and seems to be more an issue with how evidence is weighed than whether it is considered at all. The wording is admittedly open to interpretation somewhat, which is why clarification is in order.

In a he-said/she-said case with no evidence other than the accusation, it is also unfair that an accuser could essentially submit a flurry of statements to Title IX personnel, refuse to substantiate them by showing up for cross-examination, and then have a respondent found responsible of misconduct even if the respondent does not make inculpatory statements.

We suggest two modifications:

1. If a party refuses to submit to cross-examination, their statement should still be *considered* (but not viewed as the primary decisive factor) adjacent to the other evidence the party presents in support of their case, *but only when such other evidence exists*.
2. If it is only one party's word against another, *with no other evidence*, if the complainant refuses to substantiate their accusation via cross-examination the complaint should be dismissed. Conversely, in such cases where there is no other evidence than the parties' say-so, if the respondent refuses to substantiate their statements, schools should be given the right to find in favor of the complainant. This would not be a due process issue because such respondents would have failed to avail themselves of the process afforded.

More Appropriate Standards of Evidence and Punishment

§106.45(b)(7)(i) provides that schools can opt to either employ the Preponderance ("feather on the scales", or 50.01% probability the alleged misconduct occurred) standard of evidence, or the Clear and Convincing Standard (~70% probability). The catch: §106.45(b)(1)(vii) requires schools to use the same standard of

evidence against employees and faculty as they do in student-on-student Title IX proceedings.

Critics argue that the clear and convincing standard, "equates to a presumption that the complainant is lying, or a presumption that the alleged harassment never occurred."[14] This is incredibly reductionist, untrue, and little more than a denial of what the presumption of innocence is.

The presumption of innocence is merely a provisional presumption, and the goal of an investigation is to find out the truth of the matter. It is not an excuse to simply believe the accuser is lying and then call it a day, nor is it a dogma to warp all inculpatory evidence into exculpatory evidence.

We are also mindful of the fact that schools are required to remedy the effects of misconduct and are sometimes perplexed at the range of punishments available to schools that sometimes seem out of touch with whether they are adjudicating horrifying crimes or petty slights.

We reflect on the generic principles of due process we have seen time and time again: the greater the deprivation of liberty or property, the greater the process due to determine guilt. A life-altering accusation of sexual assault *should* face a more discerning process than an accusation of verbal harassment. Misconduct accusations resulting in written reprimands, or one semester or interim suspensions, should not require the same process resulting in expulsions.

Considering this sense of proportionality, we recommend the following:

1. In all cases that do not involve violence such as verbal harassment and sexual exploitation (e.g., taking or sharing sexual photos without consent), the preponderance standard should apply, and the maximum punishment should be a one-semester suspension.
2. In all cases that involve violence or credible threats of violence such as sexual assault, rape, dating violence, or violent threats, the standard of evidence should be clear and convincing. The minimum punishment should be suspension for two semesters and the maximum punishment should be expulsion, favoring expulsions for violence that is actually carried out. This will not apply to interim suspensions lasting less than two semesters or no-contact orders.

Some will argue that the clear and convincing standard is too high given that this is an academic setting and civil courts use the preponderance standard. First, regardless as to whatever they call these offenses in an academic setting, many of them are felony criminal offenses. They are not merely "misconduct" – an effectively whitewashing, catchall term that bears more similarity to a parking

[14] Federal Register, Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance

infraction than felonious rape. It is clear that although such offenses do impact academic matters, they are not exclusively academic matters.

Second, civil courts do indeed use the lower Preponderance standard of evidence. However, such courts also afford protections not available to respondents in a Title IX proceeding. Namely, courts are more open to public inspection and review than individual universities which jealously – indeed, zealously as we have seen in court proceedings - guard the secrecy of their proceedings.

Courts also afford procedures not available in a Title IX proceeding such as full discovery, the subpoena of witnesses, and sworn testimony with penalties of perjury. Courts also have more stringent standards of evidence. Unlike in a Title IX proceeding, defendants in civil court also have the option to settle.

Also relevant: judges are, on average, much more experienced at dealing with such matters than Title IX Coordinators and similar school personnel; as ATIXA has documented, tend to only stay on the job for an *average* three years.[15] Judges, by contrast, generally serve a *minimum* of four years, and often serve much longer.[16]

Students found responsible for sexual assault often receive what is effectively an academic death penalty. They are quickly faced with expulsion, loss of scholarships, loss of professional relationships, and a black mark on their record preventing re-entry into academic institutions. They are turned away from jobs requiring them to declare if they were ever accused or found responsible for sexual misconduct.

Many rape accusations are he-said / she-said cases which rely on school personnel's perceptions of students' character and credibility. These perceptions can be fooled in more ways than one. Therefore, it is inappropriate that schools use a preponderance standard that determines guilt if a feather's weight tips the scales.

[15] The Chronicle of Higher Education, Life Inside the Title IX Pressure Cooker.
[16] Indeed.com, How to Become a Judge Step by Step.

Statistical Evidence and the 2020 Regulation's Effectiveness

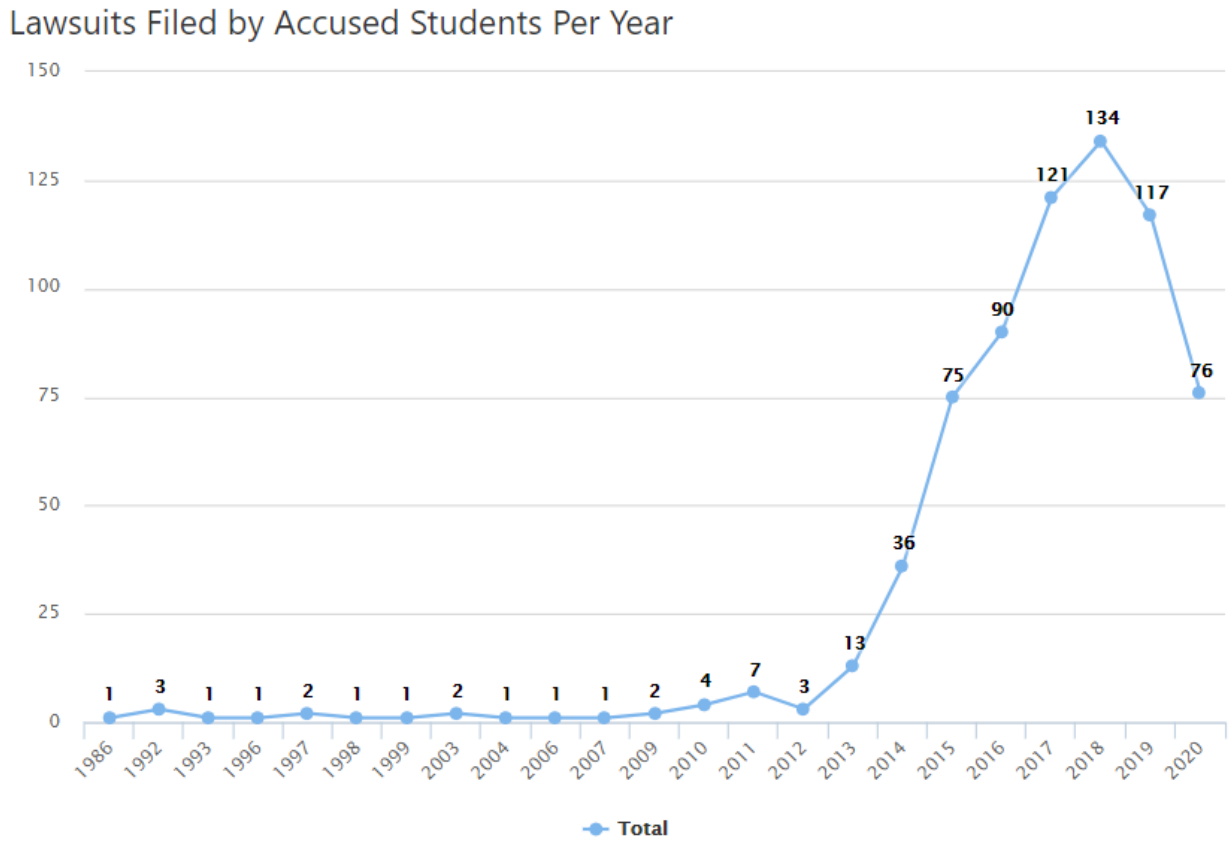
We would like to address the following in this section:

- The Trend of Lawsuits Filed Over Time
- Title IX Accusations Disproportionately Harm Black Students

The Trend of Lawsuits Filed Over Time

Prior to the Dear Colleague letter, lawsuits filed by accused students alleging unfair treatment were rare, generally only 1 or 2 per year. After the Dear Colleague Letter, lawsuits for mistreatment of accused students exploded upward, reaching a peak of 134 per year before beginning to decline after the recission of the Dear Colleague letter.

We track this information in our Title IX Legal Database. A graph detailing the sharp rise in lawsuits, based on our internal records,[17] is given below:

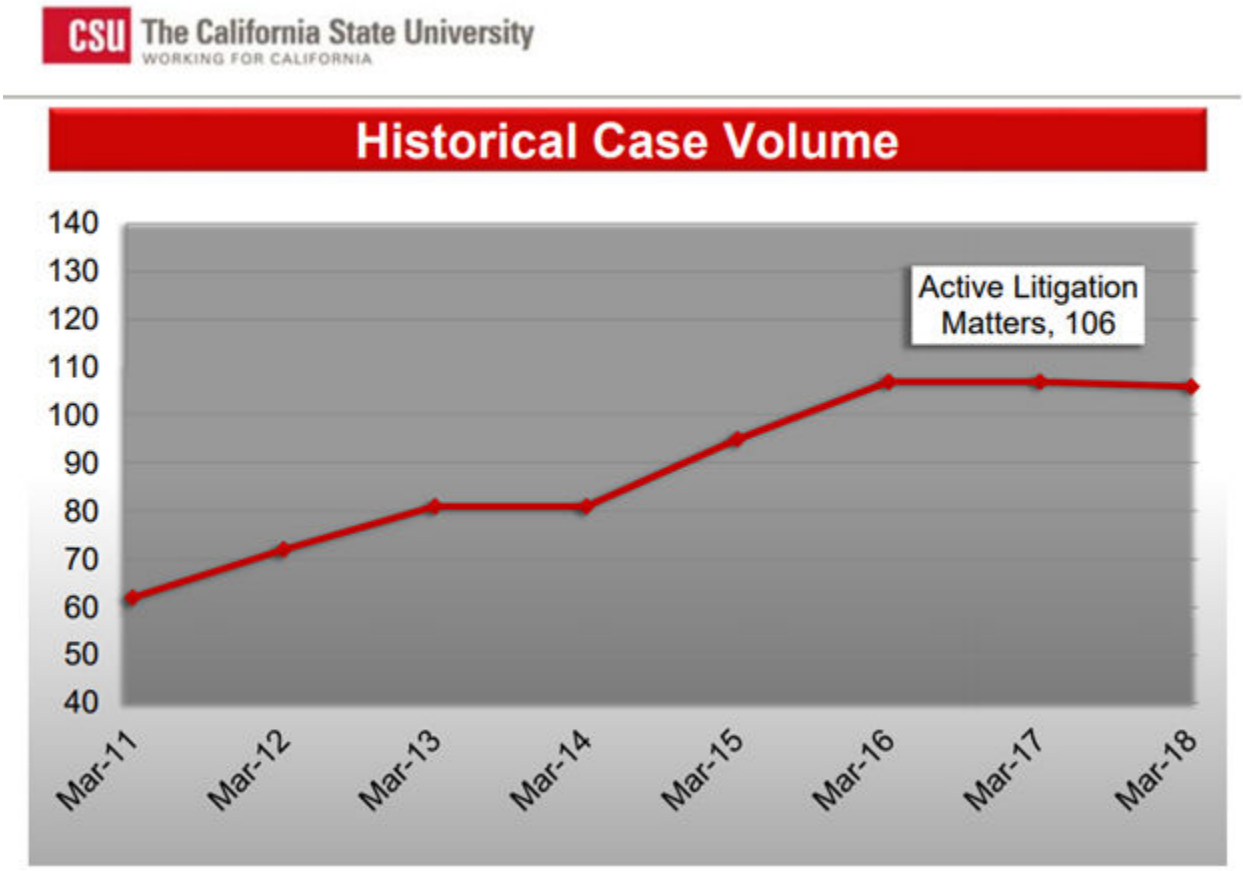


[17] Title IX for All, Title IX Legal Database.

Like numerous schools, California State University posts their Board of Trustees meeting records online. While usually mundane, they are occasionally illuminating, as they can give us an insider's view on trends the university regards as impactful.

CSU's Annual Litigation 2018 Report[18] was part of their Board of Trustee meeting records in March of the same year. This report, finalized by Executive Vice Chancellor and General Counsel Andrew Jones, was filed annually during March 2018, tracking data since the previous March.

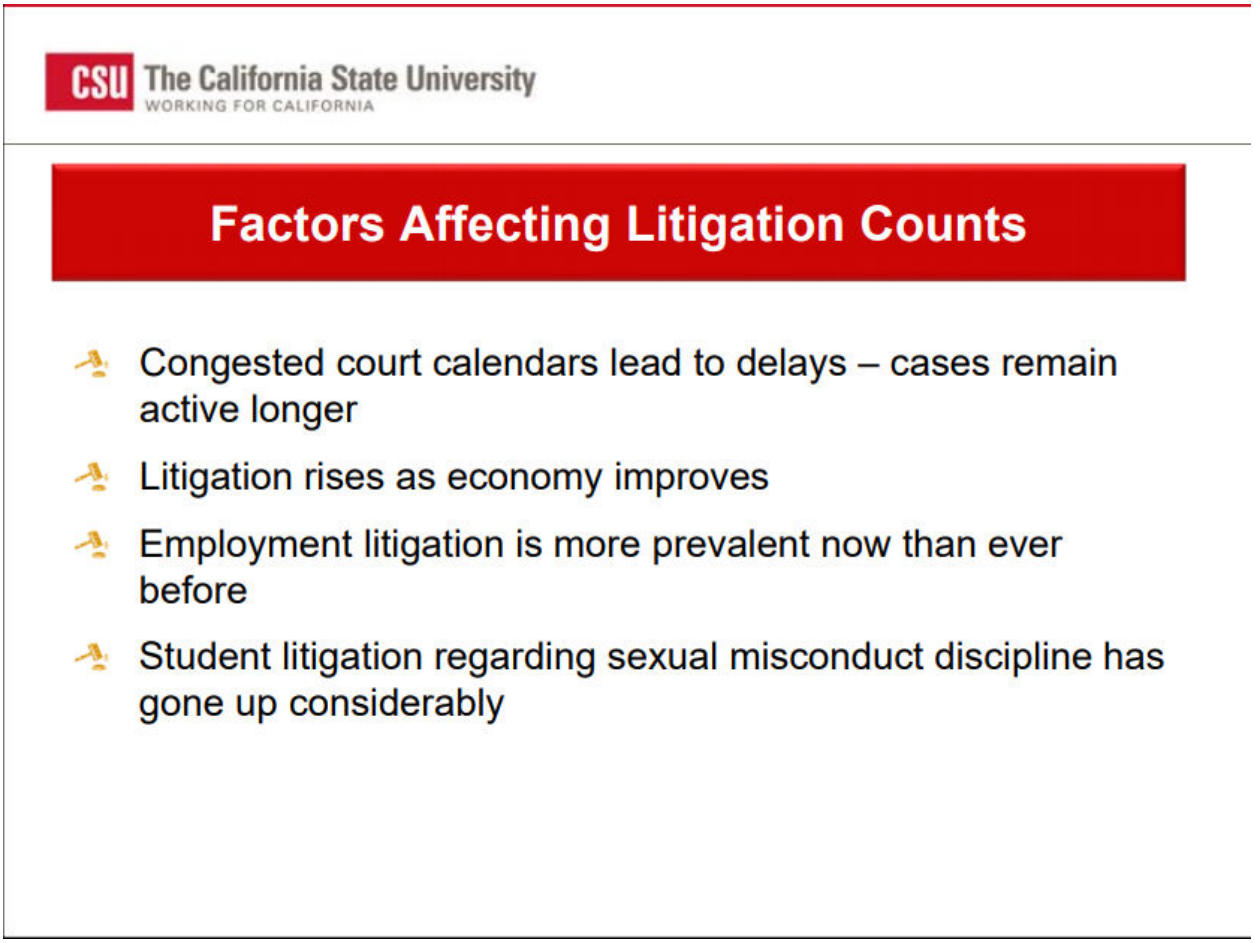
Their graph below charts the rise in lawsuits of all types from 2011 to 2018:



As you can see, litigation against the CSU system has nearly **doubled** in the last six years, jumping from ~60 lawsuits to 106. Looking at the far left of the graph, we observe that this trend started at the same time the Obama-era Department of Education released its April 4, 2011 "Dear Colleague" guidance letter, which severely infringed upon the due process rights of accused students.

[18] California State University, Minutes - Committee of the Whole.

Is this overlapping timeframe a coincidence? We need not speculate; Jones tells us why litigation has increased in the report:



Considering the broad range of issues for which a university system could be sued, it is remarkable that "sexual misconduct discipline" is given its own bullet.

As you can see in our first graph, however, since the 2020 regulations went into effect in August 2020, new lawsuits by accused students have sharply declined. Additionally, schools have won substantially more lawsuits than they have lost. Since schools are now providing a greater degree of due process, accused students less frequently find the need to sue for redress, and complaints tend to be weaker than previously, leading them to be more easily dismissed.

This sharp reversal from the previous years is an indicator that things are generally heading in the right direction and that the 2020 regulations deserve some important tweaks, but not an overhaul, and certainly not a wholesale abandonment.

Now that we have the data to confirm it without question, NCHERM's whitepaper "Due Process and the Sex Police"[19], published in January 2017, deserves a second

[19] NCHERM, Due Process and the Sex Police.

look for how prophetic it was. As the past is prologue, it can be instructive for how we proceed. Addressing overzealous school administrators who took advantage of the lack of guardrails preventing abuse and corruption, NCHERM had this to say:

> *The field is being hammered by an unprecedented wave of litigation, and higher education is losing! Do you remember the days when judges were deferential to the internal disciplinary decisions of college administrators? If those days are rapidly receding or are gone, you have to ask yourselves what role you have played in that. If you are the sex police, your overzealousness to impose sexual correctness is causing a backlash that is going to set back the entire consent movement. It is imperative that you self-correct and find a golden mean or middle path on this issue. You are sowing the seeds of your own destruction. We've been beating this drum since 2012, and we will get progressively louder and louder until you get it. If you persist, you will touch off a new wave of due process protections in the courts and in Congress, which will once again skew the playing field for victims and those who are accused – a playing field some of us have worked our entire careers to level. You don't want that because it will deeply inhibit your ability to spread the sexual correctness to which you are so very wedded. So, stop it. Now.*

By the time NCHERM sounded this warning in 2017, however, it was already too late. They published this just after 2016 had wrapped up with ~90 lawsuits by accused students. 2017 would go on to see over 120 lawsuits. 2018 would go on to see over 130. As of June 2021, higher ed has seen no less than a staggering *715 lawsuits* by accused students.

In addition to the sheer number of lawsuits, by 2017 the seeds of some of the most impactful lawsuits had already been planted:

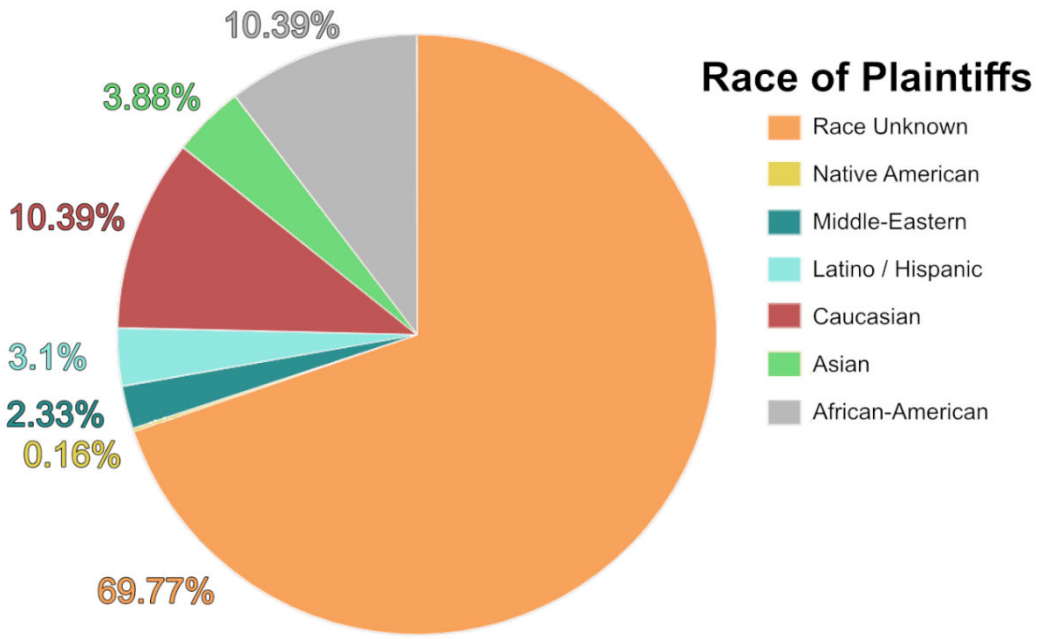
- In 2016, Purdue University expelled John Doe, ultimately resulting in a pathbreaking decision on Title IX and due process claims by no less than now-SCOTUS Justice Amy Coney Barrett and an all-female panel.
- In 2015, the University of Southern California took action against Bryce Dixon, resulting in a state appellate court decision in *Doe v. Kegan Allee* four years alter that rocked the boat for many California schools.
- In 2015, the University of Cincinnati in 2015 to punish John Doe were already being addressed by the courts, ultimately resulting in a Sixth Circuit decision in 2017 upholding live hearings, cross-examination, and neutral factfinders.
- In 2016, the University of Michigan punished a John Doe who later filed a lawsuit resulting in the 2018 *Doe v. Baum* decision in 2018 requiring live hearings and cross-examination.

Imagine how different things would have been if the Department of Education had provided a more balanced approach and, in addition to upping the standards for

schools addressing the needs of complainants, also provided robust protections for accused students. We have an opportunity to learn from history and do better.

Title IX Accusations Disproportionately Harm Black Students

We expanded the scope of our Title IX Legal Database to include demographic data of accused students in July of 2020.[20] We then analyzed that data from the ~650 lawsuits filed up to that point and found what many before had suspected but were never able to statistically prove: among plaintiffs whose races are known and when adjusted for student population, black students are four times as likely as white students to file lawsuits alleging their rights were violated in higher ed Title IX disciplinary proceedings (see image below):[21]



While a sizable portion of plaintiffs are of unknown race, we see no reason to suspect this would disconfirm the basic issue of proportionality. The implications of this data should be a wakeup call to advocates and education officials who are concerned with racial justice and disparate impact. It is clear that over the past ten years we have needed more transparency and regulation on behalf of accused students who are disproportionately African American.

[20] Title IX for All, Plaintiff Demographic Data Now Available in Title IX Legal Database.
[21] Title IX for All, Black students four times as likely to allege rights violations in Title IX proceedings.

Further Examples of Abuses Incurred by Lack of 2020 Regulations

The goal of remedying the effects of sexual misconduct and preventing its recurrence is laudable. The lack of protections for accused students in the pursuit of that goal, however, has resulted in systemic abuses and corruption that are many and various. In addition to those presented in earlier sections, we list several more here.

As you read this list, remember that nothing of this sort was happening prior to 2011. While detractors may quibble over a few bullets, it should be clear that *overall* something has gone very wrong in our academic institutions. It should also be a cautionary tale against the tyranny of good intentions.

- Upon being sued, the school destroys the investigation records (*Doe v. Quinnipiac*)
- The accused student commits suicide (*Xu v. Occidental, Klocke v. University of Texas at Arlington*)
- The accuser is not a student; the school punishes the accused anyway (*Palo v. Iowa Board of Regents*)
- Accused person not a student; school finds him guilty & shares findings of guilt with other schools (*Doe v. Rensselaer Polytechnic Institute*)
- School characterizes accuser as "more credible" when she corrects her statements; regards the accused as "less credible" when he does the same (*Doe v. Loyola University Chicago*)
- Student not clearly ID'd, all witnesses support accused student who is punished anyway (*Romer v. Washington State University*)
- Female student asks for sex in writing, male student still punished and branded a rapist (*Doe v. Occidenta*l)
- Student suspended before investigation, losing housing, graduation, etc. (*Doe v. Donald Dudley*)
- Expelled without notice or a hearing of any kind (*Caldwell v. Parker University*)
- Alleged victim is not the accuser, denies she is a victim, and is threatened by the school for defending the accused (*Boermeester v. Ainsley Carey et al*)

- Immigrant studying on student visa is deported to war-torn homeland of Syria (*Doe v. Pennsylvania State University*)

- Both accuser and accused were drunk, only male punished due to "incapacitation" (*Doe v. Amherst*)
- Accused male is drunk, female accuser is sober. Female accuses him of rape for switching from vaginal to anal without her consent, claims his being "too drunk to remember" is no excuse (*Doe v. Haas*)

- School changes the definition of sexual misconduct in the middle of the investigation to find accused student guilty (*Doe v. Pennsylvania State University*)

- Student found not guilty by the school; school refuses to release hold on transcript, lift suspension, rescind no-contact order, and instead fights him in court for months (*Doe v. Illinois State University*)

- School refused to hear from witnesses who claimed accuser had a history of false allegations, refused to see video evidence (*Doe v. Ohio Wesleyan University*)

- School changes date of hearing when they learn exculpatory evidence will be presented in a parallel criminal hearing (*Gulyas v. Appalachian State University*)
- One of panelists is friend of accuser; accused student objects, but school refuses to replace panelist (*Bleiler v. College of the Holy Cross*)

- Fraternity support of accused student characterized as "plotting," sorority support of accuser characterized as "supporting" (*Doe v. Rollins College*)

- Accuser admits initiating sex, accuses the male student of rape, and then claims he should have resisted her advances due to her "incapacitation;" she makes coherent text messages shortly after the "rape" (*Farrer v. Indiana University*)

- Accuser texts friends celebrating a consensual sexual encounter, then later claims rape (*Doe v. Western New England University*)

- Male student files complaint days before female student files complaint; school ignores male complaint entirely and punishes him for female complaint (*Doe v. Austin College*)

- Upon accusation, the student is imprisoned in a basement of the university by campus police (*Faiaz v. Colgate University*)

Lawsuits Resulting in Favorable Decisions for Accused Students

The following table contains lawsuits tracked in our Title IX Legal Database[22] that eventually resulted in a favorable judicial decision. The following materials and the contents of their links are submitted in support of these comments and are incorporated herein as if fully reprinted. All of these materials are hereby placed into the Administrative Record as part of this comment:

Lawsuit Name	Date filed	Type of file	Decision/File
Doe vs The Regents of the University of California	6/19/2019	Order - petition for writ of administrative mandate	**Note**: links to a PDF of each decision were provided the in file sent to the Department of Education. The links are disabled in this version.
Doe v. University of Massachusetts at Amherst	4/28/2021	Memorandum, Order - motion to dismiss	
The Fraternity of Alpha Chi Rho, Inc. v. Syracuse University et al	3/10/2021	Order - Article 78	
The Fraternity of Alpha Chi Rho, Inc. v. Syracuse University et al	3/10/2021	Order - Article 78	
Doe v. American University	9/18/2020	Memorandum, Opinion, Order - motion for summary judgment, Order - motion to dismiss	
Doe v. American University	12/23/2019	Motion for summary judgment	
Doe v. Elson S Floyd College of Medicine at Washington State University	2/17/2021	Order - motion to dismiss, Order - motion for judgment	
Sanning v. Board of Trustees of Whitman College	12/9/2015	Order - motion to dismiss	
Doe vs Regents of the University of California	5/24/2019	Order - petition for writ of administrative mandate	
Doe vs Regents of the University of California	5/24/2019	Order - petition for writ of administrative mandate	
Doe vs Regents of the University of California	9/18/2019	Judgment	
Doe vs Regents of the University of California	2/20/2019	Judgment	
Doe vs Regents of the University of California	11/30/2020	Decision (Court of Appeal)	

[22] Title IX for All, Title IX Legal Database.

Doe vs The Regents of the University of California	1/15/2019	Order - petition for writ of administrative mandate	
John Doe vs Regents of the University of California	12/3/2019	Judgment	
Adam Utley v. State University of New York at Buffalo	6/14/2017	Judgment	
Adam Utley v. State University of New York at Buffalo	6/16/2017	Judgment	
Zara v. Devry, Inc.	3/14/2017	Memorandum, Opinion, Order - motion to dismiss	
Zara v. Devry, Inc.	12/15/2017	Decision (Court of Appeal)	
Zara v. Devry, Inc.	3/14/2017	Judgment	
John Doe vs University of La Verne	10/1/2018	Notice, Order - petition for writ of administrative mandate	
Alaeddini vs Regents of the University of California	7/20/2018	Order - petition for writ of administrative mandate	
John Doe vs Susan Westerberg Prager et al	12/31/2018	Motion for notice, Order - petition for writ of administrative mandate	
Doe v. Princeton University et al	2/28/2020	Order - motion to dismiss	
Doe v. Princeton University et al	10/30/2019	Memorandum, Opinion	
Doe v. Princeton University et al	7/10/2019	Order - motion to dismiss	
Doe v. Princeton University et al	2/28/2020	Opinion	
Doe v. Princeton University et al	12/17/2020	Opinion	
Doe v. Princeton University et al	12/16/2020	Opinion	
Doe v. Princeton University et al	12/16/2020	Order - motion to dismiss	
Schwake v. Arizona Board of Regents et al	8/14/2015	Order - dismissal, Order - motion to dismiss	
Schwake v. Arizona Board of Regents et al	3/29/2018	Order - motion to dismiss	
Schwake v. Arizona Board of Regents et al	6/20/2017	Order - motion to dismiss	

Schwake v. Arizona Board of Regents et al	3/29/2018	Judgment	
Schwake v. Arizona Board of Regents et al	7/29/2020	Decision (Court of Appeal)	
Moe v. Grinnell College	5/7/2020	Order - motion to dismiss	
Moe v. Grinnell College	6/2/2021	Order - judgment on pleadings	
Doe v. New York University	3/31/2021	Memorandum, Opinion, Order - motion to dismiss	
Feil v. Goucher College	9/8/2020	Judgment	
Doe v. University of Connecticut	2/12/2020	Judgment	
Slater v. Arizona Board of Regents	1/29/2020	Decision (Court of Appeal)	
Benjamin C. Mallory v. Ohio University	2/14/2000	Memorandum, Response to motion for summary judgment	
Benjamin C. Mallory v. Ohio University	1/3/2002	Decision (Court of Appeal)	
Benjamin C. Mallory v. Ohio University	1/18/2000	Motion for summary judgment	
Benjamin C. Mallory v. Ohio University	12/17/2002	Judgment	
Benjamin C. Mallory v. Ohio University	1/3/2002	Judgment	
Benjamin C. Mallory v. Ohio University	2/5/2001	Judgment	
John Doe v. Purchase College State University of New York	3/31/2021	Decision (Court of Appeal)	
Doe v. Syracuse University	12/1/2020	Order - motion to dismiss	
Doe v. Syracuse University	5/15/2020	Order - motion to dismiss	
John Doe v. Arizona Board of Regents	12/24/2019	Decision (Court of Appeal)	
John Doe vs Claremont Mckenna College	2/21/2019	Judgment, Order - petition for writ of administrative mandate	
Saud v. DePaul University et al	9/24/2020	Memorandum, Opinion, Order - motion to dismiss	
Saud v. DePaul University et al	10/29/2019	Memorandum, Opinion, Order - motion to dismiss	

Doe v. University of Delaware et al	10/29/2020	Order - motion to dismiss	
John Doe vs California Institute of Technology	7/9/2019	Order - petition for writ of administrative mandate	
Doe v. University of Maine System	2/20/2020	Order - motion to dismiss, Order - motion to proceed anonymously / under fictitious name	
John Doe vs. Thomas A. Parham	12/19/2017	Order - petition for writ of administrative mandate	
Naumovski v. Binghamton University, The State University of New York	8/12/2019	Decision (Court of Appeal)	
Naumovski v. Binghamton University, The State University of New York	4/17/2018	Memorandum, Order - motion for summary judgment	
Menaker v. Hofstra University	8/15/2019	Decision (Court of Appeal)	
Menaker v. Hofstra University	9/26/2018	Memorandum, Order - motion to dismiss	
Menaker v. Hofstra University	9/27/2018	Judgment	
Averett v. Hardy et al	3/3/2020	Memorandum, Opinion, Order - motion for summary judgment	
T.S.H. v. Northwest Missouri State University	9/23/2019	Order - motion to dismiss	
T.S.H. v. Northwest Missouri State University	5/11/2021	Decision (Court of Appeal)	
T.S.H. v. Northwest Missouri State University	6/1/2021	Motion for judgment	
Vanegas v. Carleton College	2/10/2020	Order - motion to dismiss, Recommendation, Report	
Vanegas v. Carleton College	11/18/2020	Memorandum, Opinion, Order - motion for reconsideration	
Vanegas v. Carleton College	5/1/2020	Memorandum, Opinion, Order - motion to dismiss	
Franck Bisimwa v. St. John Fisher College et al	11/20/2019	Order - motion to dismiss	
Franck Bisimwa v. St. John Fisher College et al	5/7/2021	Decision (Court of Appeal)	

Doe v. The Rector and Visitors of the University of Virginia et al	6/28/2019	Memorandum, Opinion	
Doe v. University of Iowa	2/5/2020	Order - motion to amend, Order - motion to dismiss, Order - motion to strike	
Doe v. University of Iowa	7/17/2020	Order - motion to dismiss	
Doe v. Purdue University	8/19/2019	Opinion, Order - motion to proceed anonymously / under fictitious name	
Doe v. Purdue University	7/15/2020	Opinion, Order - leave	
Doe v. Purdue University	6/1/2020	Opinion, Order - motion to dismiss	
Doe v. Northern Michigan University et al	5/28/2019	Opinion, Order - motion to dismiss	
Frost v. University of Louisville et al	5/29/2019	Memorandum, Opinion	
Frost v. University of Louisville et al	7/30/2019	Memorandum, Opinion, Order - stay	
Doe v. Rhodes College	8/16/2019	Judgment	
Matter of Bursch v. Purchase College of the State University of New York, et al	9/19/2018	Decision (Court of Appeal), Judgment	
Matter of Bursch v. Purchase College of the State University of New York, et al	6/6/2019	Decision (Court of Appeal)	
Feibleman v. The Trustees of Columbia University In The City of New York	2/24/2020	Opinion, Order - motion to dismiss	
Feibleman v. The Trustees of Columbia University In The City of New York	7/9/2020	Memorandum, Opinion, Order - motion to amend	
John Doe v. California Institute of Technology	4/30/2019	Minutes, Order - motion to dismiss	
Doherty v. Bice et al	9/16/2020	Opinion, Order - motion to dismiss	
Sakolish vs. Cleary	11/25/2020	Decision (Court of Appeal)	
DeJohn v. Temple University et al	8/4/2008	Decision (Court of Appeal)	
DeJohn v. Temple University et al	3/22/2017	Order - motion for summary judgment	

DeJohn v. Temple University et al	9/11/2006	Order - motion to dismiss	
DeJohn v. Temple University et al	11/15/2006	Order - judgment on pleadings, Order - motion for judgment	
DeJohn v. Temple University et al	9/30/2008	Judgment	
DeJohn v. Temple University et al	4/26/2017	Judgment	
DeJohn v. Temple University et al	2/20/2017	Motion for summary judgment	
DeJohn v. Temple University et al	2/20/2017	Motion for summary judgment	
DeJohn v. Temple University et al	3/27/2009	Judgment	
Fogel v. The University of the Arts et al	3/27/2019	Order - motion to dismiss	
Doe v. Arizona Board of Regents et al	12/27/2019	Order - motion to dismiss	
Doe v. Arizona Board of Regents et al	3/15/2021	Response to motion for summary judgment	
Doe v. Arizona Board of Regents et al	11/18/2019	Order - motion to dismiss	
Doe v. Arizona Board of Regents et al	4/30/2021	Order - motion for summary judgment	
Doe v. Arizona Board of Regents et al	5/17/2021	Order - motion for summary judgment, Order - motion to seal	
Christopher Gonzalez-Riano vs The Florida State University	1/19/2018	Order - petition for writ of certiorari	
Doe v. Washington and Lee University	2/10/2020	Memorandum, Opinion	
Doe v. Washington and Lee University	2/10/2020	Order - motion to dismiss	
Doe v. Washington and Lee University	10/23/2020	Memorandum, Response to motion for summary judgment	
Doe v. Washington and Lee University	4/16/2021	Order - motion for summary judgment	
Doe v. Washington and Lee University	4/17/2021	Memorandum, Opinion	

Doe v. Syracuse University et al	5/8/2019	Order - motion to dismiss	
Doe v. Virginia Polytechnic Institute and State University et al	11/13/2018	Memorandum, Opinion	
Doe v. Virginia Polytechnic Institute and State University et al	11/13/2018	Order - motion to dismiss	
Doe v. Virginia Polytechnic Institute and State University et al	8/15/2019	Order - motion to dismiss	
Doe v. Virginia Polytechnic Institute and State University et al	8/15/2019	Memorandum, Opinion	
Doe v. Michigan State University et al	9/1/2020	Opinion, Order - motion to dismiss	
Harnois v. University of Massachusetts at Dartmouth	11/30/2020	Satisfaction of judgment	
Harnois v. University of Massachusetts at Dartmouth	7/23/2020	Judgment	
Harnois v. University of Massachusetts at Dartmouth	10/28/2019	Order - motion to dismiss	
Harnois v. University of Massachusetts at Dartmouth	9/30/2019	Order - motion to dismiss	
Doe v. Clark University et al	12/4/2019	Memorandum, Order - motion to dismiss	
Doe v. Clark University et al	12/4/2019	Memorandum, Order - motion to dismiss	
Doe v. Virginia Polytechnic Institute and State University et al	3/18/2020	Order - motion to dismiss, Order - motion to proceed anonymously / under fictitious name	
Doe v. Virginia Polytechnic Institute and State University et al	3/19/2020	Memorandum, Opinion	
Doe v. Virginia Polytechnic Institute and State University et al	3/18/2020	Memorandum, Opinion	
Doe v. Virginia Polytechnic Institute and State University et al	3/19/2020	Order - motion to dismiss	

Doe v. Virginia Polytechnic Institute and State University et al	2/24/2021	Order - motion for protective order, Opinion	
Matthew Boermeester v. University of Southern California	7/12/2019	Order - motion to dismiss, Order - stay	
Doe v. Syracuse University et al	2/21/2020	Memorandum, Order - motion to dismiss	
Oliver v. University of Texas Southwestern Medical School et al	2/11/2019	Memorandum, Opinion, Order - motion to dismiss	
Doe v. University of the Sciences	9/29/2020	Response to response to motion for summary judgment	
Doe v. University of the Sciences	9/1/2020	Memorandum, Opinion	
Doe v. University of the Sciences	8/25/2020	Motion for summary judgment	
Doe v. University of the Sciences	4/17/2019	Order - motion to dismiss	
Doe v. University of the Sciences	7/29/2019	Order - motion to dismiss	
Doe v. University of the Sciences	7/29/2019	Memorandum, Opinion	
Doe v. University of the Sciences	5/29/2020	Decision (Court of Appeal)	
Does v. Regents of the University of Minnesota	6/26/2019	Judgment	
Does v. Regents of the University of Minnesota	6/25/2019	Order - motion to dismiss	
Does v. Regents of the University of Minnesota	6/1/2021	Decision (Court of Appeal)	
Doe v. Haas et. al.	12/9/2019	Memorandum, Order - motion to dismiss	
Doe v. Colgate University et al	7/29/2019	Motion for summary judgment	
Doe v. Colgate University et al	4/30/2020	Memorandum, Order - motion for summary judgment, Order - trial	
Gulyas v. Appalachian State University et al	8/28/2017	Order - motion to dismiss	

In the Matter of Hall v. Hofstra University	4/3/2018	Opinion	
Powell v. Saint Joseph's University	2/20/2018	Order - motion to dismiss, Order - motion to seal	
Powell v. Saint Joseph's University	10/27/2017	Order - motion to dismiss	
John Doe vs The Regents of the University of California	7/3/2019	Order - petition for writ of administrative mandate	
Elmore v. Bellarmine University	3/29/2018	Memorandum, Opinion, Order - injunctive relief	
John Doe v. Ainsley Carry et al	7/5/2017	Order - petition for writ of administrative mandate	
John Doe v. Ainsley Carey et al	1/8/2019	Decision (Court of Appeal)	
John Doe v. Ainsley Carey et al	2/15/2017	Order - petition for writ of administrative mandate	
Erik Powell v. Montana State University et al	1/19/2018	Order - motion for summary judgment	
Erik Powell v. Montana State University et al	7/25/2018	Order - motion for summary judgment	
Erik Powell v. Montana State University et al	12/21/2018	Memorandum, Order - motion for summary judgment	
Erik Powell v. Montana State University et al	1/18/2018	Motion for summary judgment	
Erik Powell v. Montana State University et al	1/19/2018	Motion for summary judgment	
Matthew Boermeester v. Ainsley Carey et al	3/21/2018	Order - petition for writ of administrative mandate	
Matthew Boermeester v. Ainsley Carey et al	5/28/2020	Decision (Court of Appeal)	
John Doe v. Princeton University	1/9/2019	Memorandum, Opinion	
John Doe v. Princeton University	1/9/2019	Order - injunctive relief, Order - motion to dismiss	
John Doe v. University of California Santa Barbara et al	3/21/2017	Order - petition for writ of administrative mandate	
John Doe v. University of California Santa Barbara et al	6/5/2020	Decision (Court of Appeal)	
Norris v. University of Colorado Boulder et al	2/21/2019	Memorandum, Opinion, Order - motion to dismiss	

Doe v. Michigan State University et al	9/1/2020	Opinion, Order - motion to dismiss, Order to file	
John Doe v. University of South Florida - St. Petersburg	12/21/2018	Opinion, Order - rehearing	
John Doe v. University of South Florida - St. Petersburg	12/27/2018	Opinion, Order - petition for writ of certiorari	
John Doe v. University of South Florida - St. Petersburg	6/12/2018	Opinion, Order - petition for writ of certiorari	
John Doe v. Skidmore College	7/13/2017	Memorandum, Order - Article 78	
John Doe v. Westmont College, et al	4/23/2019	Decision (Court of Appeal)	
John Doe vs Regents of the University of California	10/9/2018	Decision (Court of Appeal)	
John Doe vs Regents of the University of California	4/13/2017	Order - petition for writ of administrative mandate	
Jacobson v. Blaise	1/11/2018	Judgment, Memorandum	
Doe v. Notre Dame University	5/8/2017	Opinion, Order - injunctive relief	
Doe v. Notre Dame University	11/14/2017	Order - motion for extension, Order - motion for hearing, Order - motion for summary judgment	
Jackson v. Liberty University et al	8/3/2017	Order - motion to dismiss	
Jackson v. Liberty University et al	8/3/2017	Memorandum, Opinion	
Arishi v. Washington State University	12/1/2016	Opinion	
Christian Werner, et al v. Albright College	5/2/2018	Order - motion to dismiss	
Matter of Doe v. Rensselaer Polytechnic Institute et al	11/6/2017	Order - Article 78	
Matter of Doe v. Rensselaer Polytechnic Institute et al	5/16/2019	Decision (Court of Appeal)	
Saravanan v. Drexel University	11/24/2017	Order - motion to dismiss	
Saravanan v. Drexel University	10/10/2017	Order - motion to dismiss	

Saravanan v. Drexel University	10/10/2017	Opinion	
Schaumleffel v. Muskingum University et al	3/6/2018	Opinion, Order - motion to dismiss	
Schaumleffel v. Muskingum University et al	9/27/2018	Response to motion for judgment	
Schaumleffel v. Muskingum University et al	8/9/2018	Motion for judgment	
Schaumleffel v. Muskingum University et al	8/16/2018	Order - motion to dismiss	
Doe v. Oberlin College	3/31/2019	Order - motion to dismiss	
Doe v. Oberlin College	6/29/2020	Decision (Court of Appeal)	
Doe v. University of Oregon, et. al	3/26/2018	Opinion, Order - motion to dismiss	
Doe v. University of Oregon, et. al	9/27/2017	Opinion, Order - motion to proceed anonymously / under fictitious name	
Doe v. University of Oregon, et. al	3/22/2021	Judgment	
Roe v. Adams-Gaston et al	4/17/2018	Opinion, Order - injunctive relief	
Roe v. Adams-Gaston et al	3/7/2018	Order - motion to dismiss	
Roe v. Adams-Gaston et al	11/2/2017	Opinion, Order - motion to proceed anonymously / under fictitious name	
Messeri v. University of Colorado, Boulder et al	7/31/2018	Order - motion to dismiss	
Messeri v. University of Colorado, Boulder et al	10/30/2019	Motion for summary judgment	
Messeri v. University of Colorado, Boulder et al	8/20/2020	Order - motion for summary judgment	
Messeri v. University of Colorado, Boulder et al	9/23/2019	Order - motion to dismiss	
Van Overdam v. Texas A&M University	7/23/2019	Order - motion to dismiss	
Van Overdam v. Texas A&M University	8/13/2019	Order - motion to dismiss	
Doe v. The University of Mississippi et al	1/16/2019	Order - motion to dismiss	
Doe v. The University of Mississippi et al	7/15/2020	Response to response to motion for summary judgment	

John Doe v. Regents of the University of Southern California, et al	11/15/2017	Order - petition for writ of administrative mandate	
John Doe v. Regents of the University of Southern California, et al	11/15/2017	Judgment	
John Doe v. Emilio Virata, et al	10/17/2017	Order - petition for writ of administrative mandate	
John Doe v. Ainsley Carey, et al	9/15/2017	Order - petition for writ of administrative mandate	
Doe v. Loyola University Chicago	1/24/2020	Memorandum, Opinion, Order - motion to compel	
Doe v. Loyola University Chicago	2/3/2021	Motion for summary judgment	
Doe v. Loyola University Chicago	8/13/2019	Memorandum, Opinion, Order - motion to dismiss	
Doe v. Loyola University Chicago	4/7/2021	Response to response to motion for summary judgment	
Doe v. Regents of the University of California et al	12/22/2017	Opinion, Order - petition for writ of administrative mandate	
Gischel v. University of Cincinnati et al	1/23/2018	Order - motion to dismiss	
Gischel v. University of Cincinnati et al	12/5/2018	Order - motion to dismiss	
Doe v. University of Michigan et al	4/10/2019	Order - leave, Order - injunctive relief, Order - motion to dismiss	
Doe v. University of Michigan et al	8/6/2018	Judgment	
Doe v. University of Michigan et al	4/10/2019	Order - leave, Order - injunctive relief, Order - motion to dismiss	
Doe v. University of Michigan et al	8/23/2019	Order - petition for writ of administrative mandate	
Doe v. University of Michigan et al	4/20/2020	Decision (Court of Appeal), Order - dismissal, Order - page limits, Order - petition for writ of administrative mandate, Order - stay	

Doe v. University of Michigan et al	3/23/2020	Order - motion for protective order, Order - motion for summary judgment, Order - vacate	
Doe v. University of Michigan et al	7/15/2019	Response to response to motion for summary judgment	
Doe v. White, CSU, et al.	9/24/2018	Notice, Opinion, Order - petition for writ of administrative mandate	
John Doe vs Timothy P White et al	2/7/2019	Order - petition for writ of administrative mandate	
John Doe v. Timothy P White et al	10/1/2018	Notice, Opinion, Order - petition for writ of administrative mandate	
John Doe vs the Trustees of the California State University et al	10/1/2018	Notice, Order - petition for writ of administrative mandate	
John Doe vs The Trustees of the State of CA, etc., et al	2/5/2019	Order - petition for writ of administrative mandate	
John Doe vs The Trustees of the California State University	4/12/2018	Notice, Order - petition for writ of administrative mandate	
John Doe vs The Trustees of the California State University	5/30/2018	Order - petition for writ of administrative mandate	
John Doe v. Timothy P White et al	7/12/2018	Order - petition for writ of administrative mandate	
Doe v. The University of Mississippi et al	7/24/2018	Order - motion to dismiss	
Doe v. Claremont McKenna College	8/8/2018	Decision (Court of Appeal)	
Doe v. Claremont McKenna College	12/15/2016	Judgment	
Doe v. Syracuse University	9/16/2018	Order - motion to dismiss	
Doe v. Syracuse University	4/30/2020	Order - motion for summary judgment, Order - redaction	
Doe v. The University of Southern Mississippi et al	11/27/2018	Memorandum, Opinion, Order - injunctive relief	
Doe v. The University of Southern Mississippi et al	9/26/2018	Memorandum, Opinion, Order - injunctive relief	

Doe v. The University of Southern Mississippi et al	8/28/2018	Memorandum, Opinion, Order - injunctive relief	
Doe v. The Pennsylvania State University	8/21/2018	Order - injunctive relief, Order - motion to dismiss	
Doe v. The Pennsylvania State University	8/21/2018	Memorandum, Opinion	
Doe v Johnson & Wales University	6/25/2018	Order - motion to dismiss, Transcript	
Doe v Johnson & Wales University	8/9/2019	Motion for hearing, Response to motion for summary judgment	
Doe v Johnson & Wales University	11/26/2019	Order - motion for summary judgment	
Doe v Johnson & Wales University	6/14/2019	Motion for summary judgment	
Doe v. Harvard University et al	5/28/2020	Order - motion to dismiss	
Doe v. George Washington University	8/14/2018	Memorandum, Opinion	
Doe v. George Washington University	5/16/2018	Memorandum, Motion for summary judgment	
Doe v. George Washington University	6/6/2018	Response to response to motion for summary judgment	
Doe v. George Washington University	4/25/2018	Memorandum, Opinion	
Doe v. George Washington University	8/14/2018	Order - motion for summary judgment	
Doe v. George Washington University	12/20/2018	Order - motion to dismiss	
Doe v. George Washington University	5/30/2018	Response to motion for summary judgment	
Doe v. George Washington University	6/12/2018	Response to motion for summary judgment	
Doe v. George Washington University	12/20/2018	Memorandum, Opinion	
Doe v. Trustees of Dartmouth College	5/11/2018	Order - motion to dismiss	
Doe v. University of Arkansas-Fayetteville et al	4/3/2019	Opinion, Order - motion to dismiss	
Doe v. University of Arkansas-Fayetteville et al	9/4/2020	Decision (Court of Appeal)	

Noakes v. Syracuse University	2/26/2019	Opinion, Order - motion to dismiss	
John Doe v. Samuel D. Glick, et al	10/16/2017	Order - petition for writ of administrative mandate	
John Doe v. Samuel D. Glick, et al	10/3/2019	Decision (Court of Appeal)	
Painter v. Adams, et al	10/17/2017	Order - leave, Order - motion for summary judgment	
Painter v. Adams, et al	9/6/2016	Order - fees, Order - motion to dismiss	
Painter v. Adams, et al	1/6/2016	Order - motion to dismiss	
Doe v. Quinnipiac University et al	1/22/2019	Response to motion for summary judgment	
Doe v. Quinnipiac University et al	7/10/2019	Order - motion for summary judgment	
Doe v. The Pennsylvania State University et al	1/8/2018	Memorandum, Opinion	
Doe v. The Pennsylvania State University et al	8/18/2017	Memorandum, Opinion	
Doe v. The Pennsylvania State University et al	1/8/2018	Order - motion to dismiss	
John Doe v. Grinnell College, et al.	9/6/2017	Order - motion to dismiss	
John Doe v. Grinnell College, et al.	11/2/2018	Response to motion for summary judgment	
John Doe v. Grinnell College, et al.	7/9/2019	Order - motion for summary judgment	
Mancini v. Rollins College et al	7/20/2017	Opinion, Order - motion to dismiss	
Doe v. Cornell University et al	10/2/2018	Judgment	
Doe v. Cornell University et al	9/27/2018	Response to offer of judgment	
Doe v. Phillips Exeter Academy	3/7/2017	Judgment	
Doe v. Phillips Exeter Academy	9/7/2016	Opinion, Order - injunctive relief	
Jia v. University Of Miami et al	2/12/2019	Order - motion to dismiss	

Doe v. Purdue University et al	5/31/2017	Opinion, Order - motion for protective order, Order - motion to proceed anonymously / under fictitious name	
Doe v. Purdue University et al	11/15/2017	Opinion, Order - motion to dismiss	
Doe v. Purdue University et al	6/28/2019	Decision (Court of Appeal)	
Doe v. Purdue University et al	1/11/2021	Opinion, Order - depositions, Order - fees or costs, Order - motion to quash	
Doe v. Purdue University et al	5/19/2020	Opinion, Order - motion to dismiss	
Doe v. Purdue University et al	3/31/2020	Opinion, Order - motion to dismiss	
Doe v. Purdue University et al	9/19/2019	Opinion, Order - subpoena	
Doe v. Williams College	3/29/2021	Memorandum, Order - motion for summary judgment	
Doe v. Williams College	4/28/2017	Memorandum, Order - motion to dismiss	
Doe v. Saint Mary's College	7/27/2018	Judgment	
Doe v. Saint Mary's College	5/8/2020	Decision (Court of Appeal)	
Doe v. University of Cincinnati et al	11/30/2016	Opinion, Order - injunctive relief	
Doe v. University of Cincinnati et al	9/25/2017	Decision (Court of Appeal)	
Doe v. University of Cincinnati et al	3/28/2018	Motion for summary judgment	
Doe v. University of Cincinnati et al	3/28/2018	Opinion, Order - motion to dismiss	
Doe v. University of Cincinnati et al	5/5/2018	Response to response to motion for summary judgment	
Doe v. University of Cincinnati et al	4/30/2018	Response to motion for summary judgment	
Doe v. University of Cincinnati et al	6/20/2017	Order - motion to dismiss	

Rolph v. Hobart and William Smith Colleges	9/20/2017	Order - motion to dismiss	
Doe v. The Trustees of the University of Pennsylvania	9/13/2017	Memorandum, Order - motion to dismiss	
Doe v. The Trustees of the University of Pennsylvania	9/13/2017	Order - motion to dismiss	
Doe v. Baum et al	9/7/2018	Decision (Court of Appeal), Opinion	
Doe v. Baum et al	2/12/2020	Decision (Court of Appeal), Order - petition for writ of administrative mandate	
Doe v. Baum et al	9/29/2017	Opinion, Order - leave, Order - motion to amend	
Doe v. Baum et al	10/14/2016	Order - motion to dismiss	
Doe v. Baum et al	10/3/2017	Opinion, Order - leave, Order - motion to amend	
Doe v. Baum et al	1/5/2017	Opinion, Order - injunctive relief, Order - motion to dismiss	
Doe v. Baum et al	4/1/2019	Motion for summary judgment	
Doe v. Baum et al	9/30/2019	Order - motion for summary judgment	
Doe v. Rider University	1/17/2018	Opinion	
Doe v. Rider University	8/7/2018	Memorandum, Opinion	
Doe v. Rider University	10/31/2018	Order - motion to dismiss	
Doe v. Rider University	1/17/2018	Order - motion to dismiss	
Doe v. University of Chicago et al	9/20/2017	Memorandum, Opinion, Order - motion to dismiss	
Tsuruta v. Augustana University	6/16/2017	Order - motion to dismiss	
John Doe v. Ainsley Carey, et al	12/20/2017	Notice, Order - petition for writ of administrative mandate	
John Doe v. Cornell University	1/20/2017	Opinion, Order - Article 78	
John Doe v. Cornell University	3/13/2017	Opinion, Order (amended)	
Ritter v. Oklahoma State of et al	7/22/2016	Order - motion to dismiss	

John Doe v. La Sierra University, et al	6/8/2017	Notice, Order - petition for writ of administrative mandate	
John Doe v. Occidental College	7/13/2017	Order - petition for writ of administrative mandate	
John Doe v. Occidental College	8/9/2017	Judgment, Order - petition for writ of administrative mandate	
Doe v. Lynn University, Inc.	1/19/2017	Order - motion to dismiss	
Doe v. Lynn University, Inc.	11/23/2016	Order - motion to dismiss	
Doe v. Brown University in Providence in the State of Rhode Island and Providence Plantations	9/28/2016	Opinion, Order - motion to amend	
Doe v. Brown University in Providence in the State of Rhode Island and Providence Plantations	9/28/2016	Judgment	
Montague v. Yale University et al	3/29/2019	Order - motion for summary judgment	
Montague v. Yale University et al	9/7/2018	Response to motion for summary judgment	
Montague v. Yale University et al	7/18/2018	Response to motion for summary judgment	
Montague v. Yale University et al	7/18/2018	Response to motion for summary judgment	
Montague v. Yale University et al	8/22/2018	Response to response to motion for summary judgment	
Montague v. Yale University et al	5/17/2018	Motion for summary judgment	
Marshall v. Indiana University et al	3/15/2016	Order - motion to dismiss	
Marshall v. Indiana University et al	3/15/2016	Order - motion to dismiss	
Marshall v. Indiana University et al	8/31/2016	Judgment	
John Doe v. Eric Rivera	2/1/2017	Minute order, Order - petition for writ of administrative mandate	
Neal v. Colorado State University-Pueblo et al	8/1/2017	Order - motion to dismiss	

Neal v. Colorado State University-Pueblo et al	9/11/2017	Judgment	
Neal v. Colorado State University-Pueblo et al	9/11/2017	Order - motion to dismiss	
Doe v. The Ohio State University et al	10/15/2017	Opinion, Order - motion to compel	
Doe v. The Ohio State University et al	3/19/2018	Opinion, Order - motion to quash	
Doe v. The Ohio State University et al	6/20/2018	Opinion, Order - objection	
Doe v. The Ohio State University et al	3/10/2017	Opinion, Order - motion to dismiss	
Doe v. The Ohio State University et al	8/20/2018	Opinion, Order - motion for reconsideration	
Doe v. George Mason University et al	2/25/2016	Memorandum, Opinion	
Doe v. George Mason University et al	6/21/2016	Memorandum, Opinion	
Doe v. George Mason University et al	2/25/2016	Order - motion for summary judgment	
Doe v. George Mason University et al	9/16/2015	Order - motion to dismiss	
Doe v. George Mason University et al	6/26/2015	Order - motion to dismiss	
Doe v. George Mason University et al	4/14/2016	Memorandum, Opinion	
Doe v. George Mason University et al	9/16/2015	Memorandum, Opinion	
Doe v. George Mason University et al	4/15/2016	Judgment	
Doe v. Western New England University et al	1/11/2017	Memorandum, Order - motion to dismiss	
Doe v. Gonzaga University	5/31/2001	Decision (Court of Appeal)	
Doe v. Washington and Lee University	8/5/2015	Memorandum, Opinion	
Doe v. Washington and Lee University	8/5/2015	Order - injunctive relief, Order - motion to dismiss	
Doe v. Alger et al	3/31/2016	Order - motion to dismiss	
Doe v. Alger et al	9/27/2018	Memorandum, Opinion	
Doe v. Alger et al	3/31/2016	Memorandum, Opinion	
Doe v. Alger et al	4/25/2017	Memorandum, Opinion	
Doe v. Alger et al	3/31/2016	Memorandum, Opinion	

Doe v. Alger et al	3/31/2016	Memorandum, Opinion	
Doe v. Alger et al	12/23/2016	Memorandum, Opinion	
Doe v. Alger et al	4/25/2017	Judgment, Order - dismissal	
Doe v. Alger et al	12/23/2016	Order - motion for summary judgment	
Doe v. Alger et al	4/18/2016	Motion for summary judgment	
Doe v. Alger et al	4/18/2016	Motion for summary judgment	
Benning v. The Corporation of Marlboro College	8/5/2014	Opinion, Order - motion for expedited discovery, Order - motion for protective order, Order - motion to dismiss	
Doe v. Middlebury College	10/20/2015	Memorandum, Motion for summary judgment	
Doe v. Middlebury College	10/23/2015	Exhibits, Response to motion for summary judgment	
Fellheimer v. Middlebury College, et al	8/24/1994	Opinion, Order - motion for summary judgment	
Turner v. Texas A&M University et al	6/13/2016	Order - motion to dismiss	
Turner v. Texas A&M University et al	2/5/2016	Order - motion to dismiss	
Turner v. Texas A&M University et al	2/4/2015	Order - motion to dismiss	
Corey Mock v. University of Tennessee, Chattanooga	8/4/2015	Memorandum, Order - petition for writ of administrative mandate	
Doe et al v. University Of The South	10/13/2009	Motion to proceed anonymously / under fictitious name, Order - motion for summary judgment, Order - motion to dismiss, Order - objection	
Doe et al v. University Of The South	3/31/2011	Memorandum, Order - motion for summary judgment, Order - motion to seal	
Doe et al v. University Of The South	9/2/2011	Judgment	

Doe et al v. University Of The South	7/9/2010	Motion for summary judgment	
Doe et al v. University Of The South	7/9/2010	Motion for summary judgment	
Harris v. Saint Joseph's University et al	11/26/2014	Order - motion to dismiss	
Harris v. Saint Joseph's University et al	5/25/2014	Order - motion for protective order, Order - motion to dismiss, Order - motion to proceed anonymously / under fictitious name	
Harris v. Saint Joseph's University et al	5/13/2014	Order - motion to dismiss	
Villar v. Philadelphia University et al	7/3/2014	Order - motion to dismiss	
Villar v. Philadelphia University et al	10/29/2014	Order - motion to dismiss	
Villar v. Philadelphia University et al	5/28/2015	Order - motion to dismiss	
John Doe v. Temple University et al	8/7/2014	Order - motion to dismiss	
John Doe v. Temple University et al	12/9/2013	Motion to dismiss, Order - motion to dismiss	
Browning et al v. University of Findlay et al	2/21/2019	Order - motion for summary judgment	
Browning et al v. University of Findlay et al	11/14/2018	Judgment	
Browning et al v. University of Findlay et al	9/5/2018	Order - motion for summary judgment	
Browning et al v. University of Findlay et al	4/26/2016	Order - motion to dismiss	
Browning et al v. University of Findlay et al	7/11/2018	Order - motion for summary judgment, Order - question of law, Order to file	
Doe v. Miami University et al	3/28/2017	Opinion, Order - motion to dismiss	
Doe v. Miami University et al	2/9/2018	Decision (Court of Appeal)	
Doe v. Miami University et al	3/28/2017	Judgment	
Doe v. Miami University et al	6/22/2016	Order - motion to dismiss	

Doe v. The Ohio State University et al	10/16/2015	Opinion, Order - motion to expedite	
Doe v. The Ohio State University et al	4/24/2018	Opinion, Order - motion for summary judgment	
Doe v. The Ohio State University et al	11/7/2016	Opinion, Order - motion to dismiss	
Doe v. The Ohio State University et al	1/21/2016	Order - motion to dismiss	
Doe v. The Ohio State University et al	4/20/2016	Opinion, Order - injunctive relief	
Doe v. The Ohio State University et al	10/16/2015	Opinion, Order - injunctive relief	
Doe v. The Ohio State University et al	4/24/2018	Memorandum, Opinion	
Wells v. Xavier University et al	3/12/2014	Opinion, Order - motion to dismiss	
Tanyi v. Appalachian State University et al	7/22/2015	Memorandum, Order - motion to dismiss	
Tanyi v. Appalachian State University et al	2/20/2015	Order - motion to amend, Order - motion to dismiss	
Tanyi v. Appalachian State University et al	7/22/2015	Memorandum, Order - motion to dismiss	
Doe v. Columbia University and Trustees of Columbia University	4/21/2015	Opinion, Order - motion to dismiss	
Doe v. Columbia University and Trustees of Columbia University	7/29/2016	Decision (Court of Appeal)	
Doe v. Columbia University and Trustees of Columbia University	9/9/2014	Order - motion to dismiss	
Doe v. Columbia University and Trustees of Columbia University	4/21/2015	Order - motion to dismiss	
Doe v. Columbia University and Trustees of Columbia University	4/22/2015	Judgment	
Prasad v. Cornell University	2/24/2016	Order - motion to dismiss	
Faiaz v. Colgate University et al	11/24/2014	Memorandum, Order - judgment on pleadings	
Noah Berge v. University of Minnesota	9/21/2010	Opinion	

Sterrett v. Cowan et al	2/4/2015	Memorandum, Opinion, Order - motion to amend, Order - motion to compel, Order - motion to dismiss	
Sterrett v. Cowan et al	10/3/2014	Order - motion to dismiss	
Doe v. Amherst College et al	2/28/2017	Memorandum, Order - motion to dismiss	
Doe, et al v. Trustees of Boston College, et al	10/4/2016	Memorandum, Motion for leave, Order - motion for summary judgment	
Doe, et al v. Trustees of Boston College, et al	6/8/2018	Judgment	
Doe, et al v. Trustees of Boston College, et al	7/15/2020	Response to motion for judgment	
Doe, et al v. Trustees of Boston College, et al	3/31/2021	Memorandum, Order - motion for judgment	
Doe, et al v. Trustees of Boston College, et al	6/15/2020	Motion for judgment	
Doe, et al v. Trustees of Boston College, et al	5/14/2020	Judgment	
Doe, et al v. Trustees of Boston College, et al	6/8/2018	Decision (Court of Appeal)	
Doe et al v. Salisbury University et al	3/2/2015	Motion for summary judgment, Motion to dismiss	
Doe et al v. Salisbury University et al	3/2/2015	Order - motion to dismiss	
Doe et al v. Salisbury University et al	8/21/2015	Order - motion to dismiss	
Doe et al v. Salisbury University et al	2/23/2015	Opinion, Order - motion to dismiss	
Doe et al v. Salisbury University et al	2/23/2015	Motion for summary judgment, Motion to dismiss	
Doe et al v. Salisbury University et al	2/23/2015	Order - motion to dismiss	
Doe et al v. Salisbury University et al	2/23/2015	Order - motion to dismiss	
Doe et al v. Salisbury University et al	8/21/2015	Memorandum, Order - motion to dismiss, Order - motion to seal	

Doe et al v. Salisbury University	6/2/2015	Order - motion to dismiss, Order - stipulated motion to dismiss	
Ahlum v. The Administrators of the Tulane Educational Fund	3/30/1993	Decision (Court of Appeal)	
I.F. v. Administrators of the Tulane Educational Fund	12/23/2013	Decision (Court of Appeal)	
Yempabou Palo v. Iowa Board of Regents	7/9/2015	Decision (Court of Appeal)	
King v. Depauw University	11/3/2014	Motion for summary judgment	
King v. Depauw University	12/17/2014	Order - motion to dismiss	
Hartley v. Agnes Scott College et al	6/16/2014	Decision (Court of Appeal)	
Hartley v. Agnes Scott College et al	2/2/2015	Decision (Court of Appeal)	
Johnson v. Western State Colorado University et al	10/24/2014	Order - motion to dismiss	
Johnson v. Western State Colorado University et al	5/15/2014	Order - motion to amend, Order - motion to dismiss, Order - motion to quash, Order - motion to restrict, Order - stay	
John Doe v. University of Southern California	4/5/2016	Decision (Court of Appeal)	
John Doe v. University of Southern California	12/11/2018	Decision (Court of Appeal)	
Bryce Dixon v. Kegan Allee et al	1/4/2019	Decision (Court of Appeal)	

Closing Thoughts

In the grievance process we see competing goals and values: increased reporting by alleged victims, preventing the recurrence of misconduct, respect for due process, group advocacy for either one or both sexes, and so forth. One goal must take priority, however: the search for truth. History has proven the further an adjudicatory process – no matter how well-intended - seeks to marginalize, suppress, or mischaracterize the truth of the alleged incident, the greater the likelihood of injustice. In the Title IX context, by truth I do not mean philosophical truths. I mean the truth of the alleged incident.

Where the truth of the alleged incident cannot be found, schools should refrain from causing new harm to either complainants or respondents and instead focus on accommodations, such as adjustments in living arrangements, classwork, and the maintenance of mutual no-contact orders. This is better than haphazardly issuing severe punishments to remedy baseless claims.

The 2020 regulations are imperfect, but they are leaps and bounds ahead of the previous system in terms of overall fairness. Whenever possible, look to the wealth of reasoning available in judicial decisions. They are made with the insight of judges who have invested a lifetime in the pursuit of justice and – while historically deferring to schools in matters of misconduct - decided they had gone so far that a correction had to be made.

The materials in this document and the contents of its links are submitted in support of these comments and are incorporated herein as if fully reprinted. All of these materials are hereby placed into the Administrative Record as part of this comment.

Thank you,

Jonathan Taylor

Founder, Title IX for All

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