Georgia Court Holds That General Knowledge of Student-on-Student Sexual Assault Does Not Raise Title IX Liability

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In *Doe v. Bibb Cty. Sch. Dist.*, the parents of a student filed suit against their daughter's school district for student-on-student sexual assault after she was sexually assaulted by male students at school.

The plaintiff was a special education student the high school. A male student came to the plaintiff's class and told the teacher that another teacher needed to see the plaintiff. The teacher allowed the student to leave. She was then raped and sodomized by the male student and five other male students, who were in a gang. This was the first incident of sexual assault against the plaintiff and the first accusation of sexual assault by the six male students.

Following two prior incidents of sexual assault involving students, the district had implemented a new policy requiring teachers to monitor the halls during the first fifteen minutes of their planning period. The district also retained additional campus police officers and purchased extra police communication equipment. Finally, the district trained teachers on preventing sexual assault at the beginning of each school year. The plaintiff's teacher, however, had not received the training because she was hired mid-year.

In the suit against the district, the plaintiff argued that the actions of the school district constituted a violation of Title IX for failing to take adequate steps to prevent the assault.

A violation of Title IX due to student-on-student sexual harassment may be found if:

(1) the defendant is a federal funding recipient;

(2) an appropriate person has actual knowledge of the discrimination or harassment alleged;

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(3) the defendant is deliberately indifferent to known acts of harassment; and

(4) the discrimination is so severe, pervasive, and objectively offensive that it effectively bars the victim's access to an educational opportunity or benefit."

The district claimed it did not have actual knowledge of the plaintiff's harassment. The Court explained that actual knowledge does not need to be knowledge of prior harassment of the specific plaintiff. Rather, the school must receive notice that alerts the school of the possibility of the plaintiff's harassment (for example, knowledge of inappropriate conduct by the perpetrator toward another victim).

The District Court determined that the two prior incidents were not indicative of a systematic failure which contributed to the rape of the plaintiff. Furthermore, the Court found that the issue of actual knowledge may have been found had the prior incidents involved the same gang involved with the rape of the plaintiff, or had the other incidents involved the release of a student to a fellow student without proper verification. The plaintiff's incident had been the result of lack of supervision in rooms accessible to students.

What You Need To Know

General knowledge, rather than actual knowledge, that a sexual assault on a student by another student may occur is not sufficient to hold a school district liable under Title IX. However, these are highly fact sensitive cases. Schools should implement proper training procedures and preventative measures to decrease the likelihood of such incidents occurring, which will minimize potential liability under Title IX. The attorneys at Frost Brown Todd can help you in implementing training procedures and preventative measures.

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