

NORTHERN CALIFORNIA TITLE IX ADMINISTRATORS NETWORK

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(She, her, Hers)

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DISCUSSION ITEMS

- Title IX Notice of Proposed Rule Making
- Sexual Assault Awareness Month (April)
- 50th Anniversary of Title IX (June 23, 2022)
- Survey
 - Directory
 - Show & Tell (documents, protocols, outreach, etc.)
 - Conducting Hearings
 - Support for Respondents
 - Prevention Programming
 - Restorative Justice
 - Legislative Updates
 - Policy Issues & Navigation
 - Legal Challenges
 - Back to Basics
 - Reviewing a Report
- What else is on your mind?



CASE UPDATES

Medina-Corchado v. Univ. of New Haven (D. Conn. 2022)

- Plaintiffs are five female students that used to attend the university
- Alleging both T9 and contract claims related to past university response to complaints they raised about sex-based misconduct
- Between 2015 and 2020 the plaintiffs experienced numerous acts of sexual abuse including rape, sexual assault, sexual exploitation, and sexual harassment by other male students
- Administration was indifferent to their complaints

MEDINA-CORCHADO V. UNIV. OF NEW HAVEN (D. CONN. 2022)


- **When complaints were investigated, plaintiffs claim the investigations were slow and inadequate**
- **For example – plaintiffs claim they were discouraged from filing formal complaints, one plaintiff states an administrator tried to convince her that her rape was not “violent,” and another plaintiff claims the respondent from her complaint violated the no-contact order numerous times with no consequence**
- **T9 claims were obvious but breach of contract claims were at issue**

CASE LAW UPDATES

EMERZIAN SHANKAR
LEGAL INC.

Medina-Corchado v. Univ. of New Haven (D. Conn. 2022)

- Contract claims were not based on any written agreement rather – based on university policies put in place because of T9
- Plaintiffs claim reliance on T9 based policies as a condition of their enrollment and continued attendance at the university (“implied contract”)
- Alleged breaches of this implied contract include: failure to adequately investigate complaints, repeatedly discouraging plaintiffs from pursuing their rights under school policy and federal law, failure to comply with DOE guidance on T9...



Medina-Corchado v. Univ. of New Haven (D. Conn. 2022)

- University filed motion to dismiss all breach of contract claims
- Court points out that the first part of being successful with a breach of contract claim is to show there was a contract to begin with
- Plaintiffs have failed to do this here – no facts to support the idea that the University intended for any “policy” to be enforceable as a contract
- Contract claims dismissed

CASE LAW UPDATES

EMERZIAN SHANKAR
LEGAL INC.

Cole v. Mont. Univ. Sys. (D. Mont. 2022)

- Plaintiff was a tenured professor with the university – employed since 2008
- Claims that the university discriminated against her on the basis of sex by encouraging only male faculty member in her dept. to seek his second 5 year term as dept. chairperson
- Plaintiff claimed university discouraged her from applying for the position
- Plaintiff identifies herself as a “whistleblower” with respect to the university’s long-standing practice of unequal gendered actions
- Plaintiff alleged she feared retaliation because she was speaking out

Cole v. Mont. Univ. Sys. (D. Mont. 2022)

- **University filed motion to dismiss for “failure to state a claim”**
- **Court reviews standard for disparate treatment under T9:**
- **1)member of protected class 2)suffered adverse employment action 3)qualified for the position 4)similarly situated men or white women treated more favorably**
- **University claims Plaintiff didn’t suffer adverse action because she didn’t actually apply but the court disagreed**
- **Plaintiff alleged facts sufficient to show that the application process was developed in a way such that “no reasonable female would have applied”**
- **Motion denied.**

CASE LAW UPDATES

EMERZIAN SHANKAR
LEGAL INC.



CASE STUDIES

TRYING TO FIND CLOSURE

- You have been conducting a hearing involving 2 members of the grounds crew over the past 2 days. As you are ready to call in the final witness who has a key role in the case you learn that this final witness has just tested positive for COVID and is being sent home. This witness does not have access to technology at home so you need to postpone the hearing. At the end of the day, the Respondent goes for their weekly testing, as is required by the campus, and the Respondent also tests positive for COVID. The next day, one of your Decision Makers receives a job offer from another institution and they let you know that their last day is going to be in 3 days because they had a previously scheduled vacation planned. Your policy allows for external Decision Makers so you approach the departing Decision Maker to find out if you can hire them as an Independent Contractor in order to finish out the case. However, their new employer has a non-compete clause and sees serving in this capacity as a potential conflict of interest.
- What do you do?

SISTERLY LOVE

- Maria and Consuelo are students at your institution. Maria comes to you as Title IX Coordinator and lets you know that she was sexually assaulted on numerous occasions by Consuelo's brother, Juan, who is a student at another institution about 2 hours away. Maria has reported this to local law enforcement. However, she believes that Consuelo has been facilitating the sexual assaults. Maria indicates that she and Consuelo are "friends" and they often drink together. Consuelo provides the alcohol and has resulted in Maria getting very drunk each time. Each time Consuelo invites her over to drink, Consuelo calls Juan to drive to campus. By the time Juan arrives each time, Maria is very drunk, often passed out in Consuelo's room. Each time Juan has sex with Maria without her consent while Consuelo remains in the room.
- What steps might you take as Title IX Coordinator receiving this information?
- Would you consider investigating the allegations about Consuelo? If so, would that fall within your office or another office on campus?

SEX WITH A MINOR

- Deacon is a member of a social fraternity on campus. Deacon comes to the fraternity President, Bob, and tells him that he had sex with Angie last week and just learned that she doesn't turn 18 until next week. Bob reports to Public Safety and the Title IX Office that Deacon sexually assaulted Angie and states that they are planning to remove him from the fraternity, at least on an interim basis. Public Safety reaches out to Angie before you are able to collaborate and reports their findings to law enforcement. Angie tells Public Safety that they never had sex. You reach out to Angie as well to make sure she is aware of resources and reporting options. Angie responds stating that she just wants everything dropped. She doesn't want some huge investigation because it would be a waste of time when resources could be allocated elsewhere.
- Are there any additional steps you would take as Title IX Coordinator?
- How do you work with student groups who are addressing Title IX concerns on their own without interfacing with "official" university responses?

COERCION

- Two students agree that they had sex. However, the Complainant states that she only said yes because the Respondent continually was asking her out and asking her to have sex until she was finally worn down and said yes. During the investigation she states that she wanted him to like her but was not interested in him romantically. She has told him on at least 3 occasions that she did not want to have sex because she was waiting for marriage.
- Coercion is defined as unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.
- As a Decision Maker, would you consider this to be coercion?
- What might sway your decision one way or another?

COERCION

- Would your decision change if the Respondent was the Complainant's RA?
- Would you consider the information provided about the Complainant's desire to wait to have sex until she was married?

THANK YOU

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