

No Deliberate Indifference: Circuit Court Finds University Not Liable for Student-on-Student Sexual Harassment

On December 12, 2019, the U.S. Court of Appeals for the Sixth Circuit issued a ruling in *Kollaritsch v. Michigan State University Board of Trustees*, a decision which impacts students' Title IX claims against their colleges or universities.

When the U.S. Supreme Court examined the issue of institutional liability for student-on-student sexual harassment in 1999, it held that a school may be found liable for student-on-student harassment only if it "acts with deliberate indifference to known acts of harassment in its programs or activities," and the harassment is "severe, pervasive, and objectively offensive." *Davis v. Monroe County Board of Education*, 526 U.S. 629, 633 (1999). Under *Davis*, a school "may not be held liable for damages unless its deliberate indifference 'subjects' its students to harassment." *Id.* at 644. In the years since the *Davis* decision, a split developed between the Circuit Courts regarding the interpretation of this standard, with some courts finding that a school's actions must lead to further harassment, and others holding that the school's actions must only make the students vulnerable to the possibility of further harassment.

In *Kollaritsch*, four female students alleged that they were sexually assaulted by four male students. Each female student subsequently reported her alleged assault to the University's administration, which commenced investigations. In their combined lawsuit, the students alleged that the University acted with "deliberate indifference" by failing to engage in adequate investigations of their claims under Title IX, and in so doing, made them "vulnerable" to future harassment.

One of the students claimed that because she saw her alleged attacker on campus multiple times after reporting her assault, the University failed to act quickly enough to remove her alleged attacker from campus and, in doing so, caused her harm. Another student claimed that the University acted with deliberate indifference by reinstating her alleged attacker's student status after previously expelling him. Finally, another student alleged that the fact that her alleged attacker (who had withdrawn as a student) could return to campus without prior notification to her by the University made her vulnerable to future harassment.

The Court rejected each of the students' arguments and found that the University's actions did not cause the students' continued harassment. Specifically, the Court held that for a school's response to a Title IX complaint to meet the "deliberate indifference" standard, it must be "clearly unreasonable," and that unreasonableness must cause further harassment to the student. Overall, the Court held that a student must plead, and ultimately prove: 1) an incident of actionable sexual harassment, 2) the school's actual knowledge of that incident, 3) some further incident of actionable sexual harassment, and 4) that the further actionable harassment would not have happened but for the objective unreasonableness (deliberate indifference) of the school's response.

If you have any questions about this Information Memo, please contact [Theresa E. Rusnak](#), any attorney in the [Higher Education Practice Group](#), or the attorney in the firm with whom you are regularly in contact.

For more information on issues facing colleges and universities, we invite you to subscribe to [Bond's Higher Education Law Report](#).



Bond has prepared this communication to present only general information. This is not intended as legal advice, nor should you consider it as such. You should not act, or decline to act, based upon the contents. While we try to make sure that the information is complete and accurate, laws can change quickly. You should always formally engage a lawyer of your choosing before taking actions which have legal consequences. For information about our firm, practice areas and attorneys, visit our website, www.bsk.com. • Attorney Advertising • © 2019 Bond, Schoeneck & King PLLC

CONNECT WITH US ON LINKEDIN: SEARCH FOR BOND, SCHOENECK & KING, PLLC

FOLLOW US ON TWITTER: SEARCH FOR BONDLAWFIRM