

Third Circuit Allows Title IX Claim to Proceed in Light of Inferences and Allegations of Gender Bias

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On March 31, the Third Circuit issued a ruling in *Doe v. Princeton University*, reversing a district court's dismissal of Title IX and state law claims against Princeton University by a male student who was accused of relationship violence with an ex-girlfriend. 2022 U.S. App. LEXIS 8499 (3d Cir. Mar. 31, 2022). The case addresses two important issues related to Title IX claims. *First*, the court's analysis re-affirms that Title IX claims by those accused of misconduct are equally cognizable to those of the accuser, and colleges and universities should continue to treat both the accused and accuser in the same fashion to avoid claims of gender bias. *Second*, the Third Circuit's analysis reiterates that reasonable inferences must be afforded to a pleader at the motion to dismiss stage.

I. Factual Background

The allegations in *Doe v. Princeton University* focus on the relationship and breakup of John Doe and Jane Roe, both students at Princeton. In his complaint, Doe alleged that Roe was sometimes violent with him during the course of their relationship, including both consensual violence in their sex life, as well as nonconsensual violence, such as when "Roe scratched and grabbed Doe's arm[.]" *Id.* at *2. During the course of their relationship, Roe allegedly informed Doe that she was dating other people, and Doe called off the relationship — it was later revealed that Doe had also been unfaithful. *Id.* According to the complaint, Doe's indiscretions were "[a] revelation that did not sit well with Roe, so she began spreading rumors about Doe on campus." *Id.* One of these rumors included the fact that Roe ended the relationship because "Doe was physically abusive." *Id.* Roe allegedly threatened Doe by saying: "[T]ake a year off and nothing will happen to you." *Id.*

Doe complained to Princeton's director of student life that Roe was spreading false information about him, and that he did not feel safe. *Id.* Doe alleged that he was referred to mental health services, but no one recommended that he file a Title IX Complaint. *Id.* at *2-3. Meanwhile, Roe met with Princeton's director of gender equity and Title IX administration, and while she reported that she was a victim of intimate relationship violence, she advised that she was "not interested in pursuing further action" against Doe. *Id.* at *3. Nevertheless, according to the complaint, the director of gender equity and Title IX administration "advised that Princeton wanted Roe to press charges against Doe." *Id.*

According to Doe, soon after he began a new relationship with another person, Roe agreed to pursue her claims against him. *Id.* Princeton thereafter issued a no-contact order prohibiting Roe and Doe from having any contact with each other. *Id.* On the same day the no-contact order was entered, "Roe approached Doe on a campus running trail, attempting to apologize" to him. *Id.* Doe informed a Princeton official of the incident and the violation

of the no-contact order, and “Princeton simply told Roe not to let it happen again.” *Id.* A few months later, Doe “accidentally ‘liked’ one of Roe’s social media posts,” in violation of the no-contact order, which he immediately self-reported. “Unlike with Roe’s violation, Princeton launched another disciplinary process that resulted in a reprimand and a written warning from a dean” to Doe. *Id.* at *4.

Princeton ultimately appointed a panel to investigate Roe’s allegations against Doe, evaluate the evidence, and determine whether any policy was violated. According to the complaint, “[a]t one of Doe’s meetings with the Panel, he mentioned an interest in pursuing counterclaims against Roe. Unlike with Roe, who was urged to pursue an investigation, Princeton offered Doe no guidance.” *Id.* Later, when Doe made a formal request, the panel expanded its investigation to include his claims. *Id.* Ultimately, the panel concluded that there was evidence to support the incidents of abuse alleged against Doe, but no evidence sufficient to support the incidents of abuse committed by Roe. *Id.* Doe was found responsible for a violation of the intimate relationship policy and expelled from the university. *Id.* Roe subsequently tweeted “my life is good again ... worked out boy problems that were never real problems just things I created.” *Id.* at *4-5.

II. Third Circuit’s March 31 Ruling

Doe filed suit against Princeton, alleging violations of Title IX and bringing state law claims for breach of contract, breach of the implied covenant of good faith and fair dealing, and denial of due process. The district court dismissed the claims. *Id.* The Third Circuit vacated the district court’s ruling and remanded. *Id.* In support of its reversal, the Third Circuit made several key rulings.

First, the court addressed whether it should credit the complaint’s well-pleaded allegations if they contradicted the report prepared by Princeton. *Id.* at *6. The court explained that where a fact contained in a school’s investigative report is undisputed by the complaint, it can be accepted as true at the motion to dismiss stage. *Id.* (citing *Doe v. Univ. of Scis.*, 961 F.3d 203, 208 (3d Cir. 2020)). However, the court noted that “[w]hen the thrust of facts in an ‘integral’ document are contested by the well-pleaded facts of a complaint, the facts in the complaint must prevail.” *Id.* This ruling is notably distinct from other Third Circuit cases, including a decision the Third Circuit issued on January 25, which recognized that when an allegation in the complaint is contradicted by a document incorporated in it by reference, the document controls, and the allegation is not accepted as true. *See Lungu v. Antares Pharma Inc.*, 2022 U.S. App. LEXIS 2117, *10 n. 14 (3d Cir. Jan. 25, 2022); *see also ALA, Inc. v. CCAIR, Inc.*, 29 F.3d 855, 859 n.8 (3d Cir. 1994). Based on its belief that the allegations in a complaint control, the Third Circuit found the district court’s ruling that “credibility determinations [by Princeton] were supported by sufficient evidence” was erroneous in light of Doe’s allegations that Princeton rendered “inconsistent credibility determinations.” 2022 U.S. App. LEXIS 8499, at *8.

Second, the court held that the district court erred in ruling that Doe had alleged no Title IX violation for the failure to investigate his claims of harassment because he does not allege that he filed a complaint to trigger such an investigation. *Id.* at *9-10. This was error because while it might be plausible that this is a nondiscriminatory reason why Princeton did not investigate his claims, “alternative explanations are not fatal to Doe’s ability to survive a Rule 12(b)(6) motion to dismiss,” and “Doe plausibly alleged that he reported a violation that was not investigated by the University,” which supports the inference that “sex was a motivating factor in Princeton’s investigation.” *Id.* at *10.

Third, the court ruled that Doe had a separate, cognizable claim for violation of Title IX through his allegation that Roe’s violation of the no-contact order was met with a nonserious response by Princeton, while his violation of the no-contact order was met with more serious consequences. *Id.* at *13. Coupled with the pressure on institutions created by the 2011 Dear Colleague letter and the allegedly disparate handling of Roe’s and Doe’s allegations of misconduct, the court found that Doe stated a claim for sex discrimination. In so ruling, the court rejected Princeton’s claim that the disparate treatment was because Doe’s violation of the no-contact order was not his first violation — a fact contained in Princeton’s brief and not in the complaint.^[1] *Id.* at *11.

Fourth, the court held that the district court erroneously dismissed all of Doe’s state law claims for contractual and related relief. The court explained that under New Jersey law, specifically *Hernandez v. Don Bosco Preparatory High*, 730 A.2d 365, 375 (N.J. Super. Ct. App. Div. 1999), a school must at least “follow its own established procedures” for handling disciplinary complaints, and those procedures must be “fundamentally fair.”^[2] 2022 U.S. App. LEXIS 8499 at 16. Because the complaint alleged that the panel’s decision “failed to consider the entirety of the evidence with a neutral gaze, disregarded exculpatory evidence, and rendered inconsistent and skewed credibility determinations,” the court found it “must credit the Complaint’s factual allegations.” *Id.* at *17-18 (internal quotation marks and alterations omitted).

While the court noted that Doe’s allegations were sufficient to overcome a motion to dismiss, it was careful to note that “[d]iscovery might not bear out Doe’s account” of the allegations. *Id.* at *1.

III. Implications for Colleges and Universities

The *Doe v. Princeton University* decision makes clear that colleges and universities must follow their articulated policies in good faith and treat the accused and accuser in a similar manner that is free from any bias based on gender. The court invoked the concept of “fundamental fairness,” which the Third Circuit also leaned on in *Doe v. University of the Sciences*, reiterating that schools should be wary that their processes also must have some baseline of fairness. This similar treatment not only applies to the investigation or hearing, but also to advice and supportive measures college and university administrators communicate to those involved in the process. In other words, neutrality and fundamental fairness to all participants is paramount in handling Title IX matters.

While *Doe v. Princeton University* appears to set a low bar for pleading a Title IX claim, the bar is not insurmountable. The plausibility standard under *Twombly* and *Iqbal* still applies, and the absence of any well-pleaded allegations of gender bias or deliberate indifference still results in dismissal of Title IX claims.

^[1] The court did suggest that to the extent Doe intentionally omitted a material fact from his complaint — such as a prior history of violating the no-contact order — Princeton “may, of course, pursue this theory in a separate motion under Rule 11 or 56.” *Id.* at 11 n.12.

^[2] The court suggested that additional protections may be available under New Jersey law for students, but it found the baseline of protections offered by *Don Bosco* were enough to reverse.

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