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## Finally, Some Good News: New Support for Treating Interpersonal Violence as Actionable under Title IX

At least two courts and the Department of Education have concluded that cases involving dating violence fall squarely within Title IX's reach.

By Kimberly M. Hult and Lauren E. Groth

Over the last two decades, Title IX of the Education Amendments of 1972, 20 U.S.C. §1681, which prohibits discrimination based on sex in educational programs and activities that receive federal funding, has become an important means of combating sexual misconduct and gender-based discrimination in the nation's schools. But as Title IX claims have increased, the battles over what constitutes "sex-based" discrimination have likewise grown, with many schools arguing that plaintiffs cannot prove that their harassment was based solely on their gender or sex. One recent development, however, has brought some welcome good news: Despite repeated challenges by educational institutions, at least two courts and the Department of Education (DOE) have concluded that cases involving intimate partner violence (IPV)—also known as "dating violence"—fall squarely within Title IX's reach. These rulings, the U.S. Supreme Court's recent decision in *Bostock v. Clayton County*, and the revised DOE-issue regulations should help students seeking relief for an often-overlooked form of sex-based discrimination that jeopardizes not only their physical and emotional health but also their access to equal educational opportunities.

There is no question about the scope of the problem. IPV among students, particularly young women, is alarmingly widespread. The National Coalition Against Domestic Violence reports that nearly 21 percent of female (and 13.4 percent of male) high school students report physical or sexual abuse by a dating partner. By college, [the number of young women subjected to violent or abusive behaviors increases sharply, with 43 percent reporting such abuse](#). The Department of Justice has also long noted that [young women between the ages of 16 and 24 are at the highest risk of IPV](#).

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Despite—or perhaps because of—the frequency of such violence, schools have often argued that IPV is not sex-based discrimination even when their own Title IX policies state otherwise. In the last year, two federal courts have squarely rejected this argument, finding that schools that fail to respond appropriately to known IPV may violate Title IX when such violence is rooted in sex-based discrimination.

In *DeGroot v. Arizona Board of Regents*, 18cv000310-PHX-SRB, top officials at the University of Arizona (UA) received detailed information about six months before his arrest that a football player, Orlando Bradford, was physically abusing two students with whom he was in romantic relationships: “Student A” and Ms. DeGroot. After learning of the violence, UA failed to act to protect DeGroot or even to open a Title IX investigation, and the abuse increased. Following Bradford’s conviction and prison sentence, DeGroot brought Title IX claims against the university.

In response, UA argued that the IPV was not sex-based discrimination and, therefore, could not be actionable under Title IX. UA conceded that the abuse occurred during a dating relationship, but insisted that DeGroot could not establish that the IPV was based upon sex as opposed to Bradford’s personal animus, insecurity, or jealousy.

On February 7, 2020, the Arizona federal court ruled otherwise, finding that the record was “replete” with evidence that the IPV was sexually motivated. In particular, the court highlighted Bradford’s text messages, which reflected a “a cruel vision of female sexuality,” his use of obscene names for DeGroot, his unsupported allegations of infidelity, and his use of graphic sexual demands. The evidence, the court concluded, demonstrated that Bradford’s “personal animus” was “inextricably linked to [DeGroot’s] sex and to his own conceptions of gender roles and expectations.” Order at 17–18.

Similarly, in August 2019, a Nebraska federal court ruled in *Roohbakhsh v. Board of Trustees of the Nebraska State Colleges and Chadron State College*, 409 F. Supp. 3d 719 (D. Neb. 2019), that the IPV suffered by a female student fell within Title IX’s scope. In *Roohbakhsh*, school officials, including coaches, the Title IX administrator, the athletic director, and residence-hall staff, received reports that a football player was regularly abusing his girlfriend, a college softball player, who eventually died by suicide on campus. Rejecting the school’s attempts to characterize the IPV as outside of Title IX’s protections, the court concluded that a jury could find that the IPV was gender-based. In so ruling, the court warned the college (and other schools) that “in the context of Title IX protections, physical abuse in the context of a romantic relationship cannot be assumed to be nothing more than interpersonal conflict.” *Id.* at 735.

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Lending further support to these recent Title IX decisions, the Supreme Court recently confirmed in *Bostock v. Clayton County*, No. 17-1618 (June 15, 2020), a Title VII employment case, that sex need be only one but-for cause of alleged sexual discrimination, and defendants “cannot avoid liability by citing some *other* factor that contributed” to the discrimination. In the context of IPV, the ruling supports an argument that even if a school can legitimately argue that IPV is rooted in personal animus in addition to gender-based discrimination, that violence remains within the purview of Title IX.

Finally, the DOE’s Office of Civil Rights recently issued revised Title IX regulations to address perceived ambiguities in the statute. Much has and will be written about the revised regulations and ensuing legal challenges. But with respect to IPV, the OCR found that even a single instance of such abuse, with its devastating impact, falls squarely within Title IX’s scope.

Dating violence, domestic violence, and stalking are inherently serious sex based offenses that risk equal educational access, and failing to provide redress for even a single incident does, as commenters assert, present unnecessary risk of allowing sex-based violence to escalate. The Department is persuaded by commenters’ arguments and data showing that dating violence, domestic violence, and stalking are prevalent, serious problems affecting students, especially college-age students. The Department believes that a broad rule prohibiting those offenses appropriately falls under Title IX’s non-discrimination mandate without raising any First Amendment concerns. The Department therefore revises the final regulations to include dating violence, domestic violence, and stalking as defined in the Clery Act and VAWA [Violence Against Women Act].

85 FR 30026, 30172 (published May 19, 2020).

Despite these promising developments, counsel for students bringing claims based upon a school’s asserted failure to respond to known IPV should continue to anticipate arguments that IPV does not fall within Title IX’s scope. With that in mind, counsel can and should take early steps to develop the evidence and rebut any such challenge, including the following:

- Obtaining the school’s current and historical Title IX policies through Freedom of Information Act requests, internet searches, required disclosures, and formal discovery. A school’s Title IX policies will likely specifically address IPV—or should, given the new Title IX regulations.
- Obtaining information on the existence of the school’s other Title IX investigations or proceedings involving IPV claims through formal discovery.

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- Developing evidence that gender was a factor in the IPV, such as through text messages and social-media communications. Those communications may reveal that the IPV was accompanied by sexual epithets, long recognized by courts as revealing sex-based animus, or that the violence was motivated by the victim's failure, or unwillingness, to conform to gender-based stereotypes. *See e.g., Forrest v. Brinker Int'l Payroll Co.*, 511 F.3d 225, 229-30 (1st Cir. 2007); *Krebs v. New Kensington-Arnold Sch. Dist.*, WL 6820402, \*1, \*3 (W.D. Pa. 2016).
- Developing evidence that alleged harasser sought to control behaviors of the victim, particularly in other romantic relationships, or otherwise engaged in sexually aggressive behaviors.

IPV cases brought under Title IX will remain challenging for other reasons, such as the high legal standards imposed on those claims and the inherent difficulties in quantifying the damages associated with such abuse and discrimination. But with the recent rulings and regulations and careful development of the evidentiary record, students facing known IPV that is then ignored or not redressed by their schools now are better able to argue successfully that this violence was sex-based discrimination specifically prohibited by Title IX.

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