

## Title IX: A paradigm of legal nuance

Helene M. Weiss and Daniel Pollack | February 8, 2024



Title IX of the Education Amendments of 1972 affords protection from discrimination based on sex in education programs or activities that receive federal financial assistance. Schools subject to Title IX must independently investigate claims of sex discrimination, assess responsibility to a party (based on their own codes of conduct that are compliant with Title IX), and administer any appropriate disciplinary measures. Title IX investigations are supposed to be a fair and effective tool to make informed decisions about student complaints. Not surprisingly, the practical application of this federal law is often as

nanced as the behaviors that brought about the complaint to begin with. A recent case demonstrates this very well.

In *Matter of P.C. v. Stony Brook University* (2023 N.Y. App. Div), a student respondent was accused of violating several sections of the university's Code of Student Responsibility by "engaging in various forms of sexual misconduct against [a fellow student]." As such, a Title IX investigation into the conduct at question was initiated, and the University Review Panel determined that the accused student was in fact responsible for violating several sections of the university's Code. Ultimately, the student respondent was suspended.

However, the student appealed the university's decision, which was reversed by the Supreme Court of New York. The court held that the University Review Panel "did not find that the [student victim] was incapacitated by intoxication, and since there was no finding on incapacitation, the only question before the court was whether substantial evidence showed that the [student victim], while able to consent, nevertheless did not do so."

To some, this was a surprising judgment call. The court held that the answer to that question was "no"—and that there was *not* substantial evidence to prove the victim was "unable to consent"—and that the Review Panel was "not left with adequate evidence to support the conclusion that [the victim] had not affirmatively consented to the sexual conduct in which she engaged with the petitioner." As such, the university vacated all penalties imposed upon the petitioner and expunged any references regarding the incident from his academic record.

For victims of on-campus sexual assault, a decision like this one can be a disturbing reminder of the exact rights that survivors of abuse are afforded.

Due to the university's inability to adequately determine incapacity—a seeming error on behalf of the university's Title IX panel—the court ruled that there was not enough evidence to prove the student had not “affirmatively consented” to the sexual acts in question. Thus, if a Title IX administrative panel isn't properly and thoroughly conducting their job, the harsh and sobering consequences may fall on the claimant.

The Title IX hearing process is a grueling one. Students are expected to submit to a panel, gather their own evidence, witnesses and an advisor and put trust in their school's administrative powers. When an administrative panel fails to adequately conduct their review, or completely neglects to analyze essential questions required to evaluate a Title IX claim (such as incapacitation), miscarriages of justice can occur.

Had the Review Panel at Stony Brook conducted a thorough examination into the ultimate questions at hand and evaluated the necessary element of incapacitation, or had the university hired an outside Title IX Hearing Officer to formally conduct the hearing in a manner that abides by the university's own rules, the victim in this case may have had a much different outcome.

Unsurprisingly, the hiring and use of outside Title IX hearing officers by university Title IX departments has become a more common practice in recent years. As universities come to the realization that Title IX proceedings and hearings require much more attention to complex and subtle legal issues than most administrators or university professors are

equipped to handle, outsourcing to an expert in the field has become a desirable option for colleges, and one that leaves less room for error, both for the accused and for the victim.

Title IX misconduct allegations can yield serious academic, psychological and professional consequences for the claimant and the accused. For this reason, the many nuances of Title IX work demand that attorneys be able to advocate for appropriate and timely corrective actions with as little disruption as possible.

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