COMMENT ON PROPOSED TITLE IX REGULATION

7 Appellate and 42 Trial Court Decisions Document Lack of Impartiality in Campus Investigations

Submitted by SAVE

This Comment, along with the information cited in footnotes 1,2, 3 and 5, is to be included as part of the Administrative Record

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An impartial and fair investigation is the foundation of an equitable adjudication. Inexplicably, many colleges conduct Title IX investigations that are openly described as "victim-centered," "trauma-informed," or based on "Start by Believing" principles. The stark absence of a credible scientific basis for investigative methods based on "victim-centered,"[1] "trauma-informed,"[2] or "Start by Believing"[3] ideology has been extensively documented.

Not surprisingly, judges have employed strong language in their decisions of lawsuits alleging investigative misconduct by the institution of higher education:

- **Judge Brenda K. Sannes**: The university trained its investigators that "inconsistency in the alleged female victim's account [is] evidence that her testimony is truthful, because of alleged trauma….Plaintiff alleges that the investigation relied on 'trauma informed techniques' that 'turn unreliable evidence into its opposite,' such that inconsistency in the alleged female victim's account. . .becomes evidence that her testimony is truthful." — *Doe v. Syracuse University*

- **Judge F. Dennis Saylor**: "Whether someone is a 'victim' is a conclusion to be reached at the end of a fair process, not an assumption to be made at the beginning. Each case must be decided on its own merits, according to its own facts." — *John Doe v. Brandeis*

- **Judge T.S. Ellis**: "The undisputed record facts reflect that, as of the time plaintiff was allowed to present his defense before [university investigator] Ericson, Ericson admits that he had 'prejudged the case and decided to find [plaintiff] responsible' for sexual assault." — *John Doe v. George Mason University*

[1] 'Victim-Centered: The Transformation of Justice. http://www.prosecutorintegrity.org/sa/victim-centered-investigations/
[2] Trauma-Informed: Junk Science. http://www.prosecutorintegrity.org/sa/trauma-informed/
[3] Start By Believing: Ideology of Bias. http://www.prosecutorintegrity.org/sa/start-by-believing/

- **Judge John Padova**: The university's training document "warns against victim blaming; advises of the potential for profound, long-lasting, psychological injury to victims; explains that major trauma to victims may result in fragmented recall, which may result in victims 'recount[ing] a sexual assault somewhat differently from one retelling to the next'; warns that a victim's 'flat affect [at a hearing] does not, by itself, show that no assault occurred'; and cites studies suggesting that false accusations of rape are not common….In light of these same allegations, we also conclude that the Complaint plausibly alleges that the investigators were not 'appropriately trained as investigators in handling sexual violence cases.'" — *Doe v. University of Pennsylvania*

- **Judge Daniel P. Jordan**: "Taken as a whole, the Court concludes that Doe has stated a plausible claim. This is a consent-based case in which the victim did not appear before the hearing panel, yet there seems to have been an assumption under [Title IX Coordinator] Ussery's training materials that an assault occurred. As a result, there is a question whether the panel was trained to ignore some of the alleged deficiencies in the investigation and official report the panel considered." — *Doe v. University of Mississippi*

As of December 31, 2021, seven appellate and 42 trial court decisions against colleges and universities had been handed down that articulated serious deficiencies in the conduct of campus investigations. These 49 decisions represent the largest category of Title IX violations identified among over 200 judicial decisions.

The relevant language from these 49 decisions is shown below. The judicial decisions are presented in reverse chronological order, and the legal basis of each decision is shown in parenthesis.

Unfortunately, the recent Department of Education Title IX proposal[4] would allow the same official to serve as both the investigator and decision-maker, what is known as the "single-investigator" model – see §106.45(b)(2). Conflating these two roles constitutes a conflict of interest, would substantially exacerbate the problem of investigative bias, and would expose universities to another round of costly and embarrassing lawsuits.

SAVE recommends that the 2020 Title IX regulation, particularly Section 106.45 (b)(1), which reliably accounts for the neurobiology of trauma[5] and reflects the extensive body of case law cited below, be retained and vigorously enforced by the Department of Education.

[4] https://www2.ed.gov/about/offices/list/ocr/docs/t9nprm.pdf
[5] http://www.prosecutorintegrity.org/wp-content/uploads/2020/03/Review-of-Neurobiology-of-Trauma-3.20.2020.pdf

APPELLATE AND TRIAL COURT DECISIONS THAT FOUND A LACK OF INVESTIGATIVE IMPARTIALITY

Appellate Court Decisions

Alexander M. v. Cleary (SUNY-Albany), 188 A.D.3d 1471, 1476 (N.Y. App. Div. Nov. 25, 2020) (reversing the denial of a motion for discovery under fairness and procedural due process grounds): "An impartial investigation performed by bias-free investigators is the substantive foundation" of a legal proceeding.

Schwake v. Arizona Bd. of Regents, 967 F.3d 940, 951 (9th Cir. July 29, 2020) (reversing district court's dismissal of Title IX action for failure to state a claim): "Schwake's allegations of the University's one-sided investigation support an inference of gender bias. According to Schwake, the University [among other things] . . . failed to consider his version of the alleged assault or to follow up with the witnesses and evidence he offered in his defense . . . [and] promised him that it would only consider 'one accusation at a time' but then suspended him based on additional violations of the Student Code to which he was not given an opportunity to respond[.]"

Doe v. Oberlin College, 963 F.3d 580, 586-87 (6th Cir. June 29, 2020) (reversing and remanding the district court's order granting the university's MTD because Doe stated a plausible Title IX erroneous outcome claim): "The College's own Policy states that usually its investigation will be completed in 20 days, and the matter as a whole will be resolved in 60. But here the investigation alone took 120 days[.]"

Doe v. Univ. of Scis., 961 F.3d 203, 210 (3d Cir. May 29, 2020) (denying defendant's MTD because Doe plausibly stated Title IX, breach of contract, and procedural due process claims): "As for Roe 2, Doe alleges that USciences '[e]ngaged in selective investigation and enforcement of [its] policies by failing to consider [Doe's] alcohol consumption and whether [Roe] 2 should have been charged with violations of [the Policy] if [Doe] was intoxicated when they had sex[.]' According to the investigator's report, Roe 2 and Doe consumed between three and five drinks each. Doe further alleges that '[a]lthough both [he] and [Roe] 2 had been drinking [during the party], [USciences] identified [Doe] as the initiator of sexual activity, notwithstanding the comparable intoxication of both participants.'"

Velez-Santiago v. State University of New York at Stony Brook, 170 A.D.3d 1182, 1183 (N.Y. App. Div. Mar. 27, 2019) (Article 78 proceeding; ruling in favor of the petitioner due to lack of substantial evidence supporting finding of responsibility, annulling Stony Brook's determination of guilt and expunging the matter from Petitioner's school record): "The record reflects that the complainant did not report to investigators that the petitioner engaged in the act which formed the basis for the hearing panel's conclusion that the petitioner violated the aforementioned Conduct Code sections and made no allegation at the hearing that such conduct occurred… The

hearing panel's conclusion that the conduct occurred and was nonconsensual was based on no evidence and, thus, comprised of nothing more than 'surmise, conjecture, [or] speculation.'"

Doe v. Allee, 242 Cal. Rptr. 3d 109, 137 (Cal. Ct. App. Jan. 4, 2019) (reversing the trial court's judgment against Doe with directions to grant Doe' petition for writ of administrative mandate and set aside the findings that Doe violated the University's sexual assault policy because Doe was denied fundamental fairness throughout his sexual assault allegation):
"[Investigator and Adjudicator] Dr. Allee failed to check with the athletic department to determine its policies and practices regarding sexual relations between student trainers and athletes, let alone ascertain the existence of the agreement [the accuser] Roe purportedly signed [to not have any sexual relations with athletics after she was caught doing so]."

Doe v. Miami University, 882 F.3d 579 (6th Cir. Feb. 9, 2018) (reversing the district court's MTD order of Doe's claims because Doe plausibly claimed a possible Title IX violation):
"John incorporated an affidavit from an attorney who represents many students in Miami University's disciplinary proceedings, which describes a pattern of the University pursuing investigations concerning male students, but not female students." at 593.
"John points to his own situation, in which the University initiated an investigation into him but not Jane, as evidence that Miami University impermissibly makes decisions on the basis of a student's gender." at 593-94.
"John contends that Miami University was facing pressure to increase the zealousness of its "prosecution" of sexual assault and the harshness of the sanctions it imposed because it was a defendant in a lawsuit brought by a student who alleged that she would not have been assaulted if the University had expelled her attacker for prior offenses." Id. at 594.

Trial Court Decisions

Doe v. Purdue University, No. 4:18-cv-00089 (N.D. Ind. Jan. 13, 2022), ECF No. 72 (denying the university's motion for summary judgment because a reasonable jury could find the university violated Nancy Roe's rights protected under Title IX and the 14th Amendment's equal protection clause and due process clause):
"[The Dean of Students] Sermersheim's definition [of incapacitation] does not comport with the official Purdue definition of incapacitation for purposes of its anti-harassment policy. Indeed, her definition requires a much lower degree of functioning for the alleged victim to be considered incapacitated and therefore unable to consent. Roe's definition is closer to Purdue's definition. If Sermersheim applied her definition when making her decision as to Roe's incapacity, a jury could find that her conclusion was inconsistent with Purdue's stated policy. If Roe was held to a different standard than Purdue's stated policies described, a jury could determine that the investigative process was unreasonable." at *14-15.
"[I]f Sermersheim applied the wrong standard to reports in which incapacity was an issue, the process itself may have been fundamentally flawed. In that situation, a jury could find the flaws in the process equate to deliberate indifference and punishing reporters for those reports would be an intentional response." at *15.

Doe v. University of Texas Health Science Center at Houston, no. 4:21-cv-01439, at *19 (S.D. Tex. Dec. 13, 2021) (denying defendant's motion to dismiss because Doe plausibly alleged a Title IX erroneous outcome claim against the university and a due process claim against the individual defendants):
"Doe alleges that committee members joked and gossiped about his 'problems with women' and failed to protect his confidentiality throughout the disciplinary process."

Doe v. Embry-Riddle Aeronautical University, no. 6:20-cv-1220-WWB-LRH, at *15 (M.D. Fla. Nov. 4, 2021) (denying in part the university's motion to dismiss because Doe plausibly presented Title IX selective enforcement and breach of contract violations):
"Additionally, both Plaintiff and the counsel that represented him in the proceedings have provided statements from which a reasonable jury could conclude that [Embry-Riddle Aeronautical University] officials did not treat Plaintiff in an impartial manner during and in connection with its investigation. For example, Jane Roe explicitly requested that [investigator] Meyers-Parker not contact any witnesses on her behalf, including her suitemate because they 'no longer g[o]t a long [sic],' and her request was honored. However, when Jane Roe pointed out that Plaintiff had failed to list his roommate as a witness, Meyers-Parker independently contacted that individual for his statement. A reasonable jury could infer this was done in an effort to avoid learning damaging information regarding Jane Roe's claim while seeking evidence to support a finding of guilt by Plaintiff, which would certainly indicate that the investigation was not impartial."

Moe v. Grinnell College, No. 4:20-cv-00058-RGE-SBJ, at *27-28 (S.D. Iowa Aug. 23, 2021) (denying the college's motion for summary judgment because Moe plausibly states a Title IX claim and breach of contract claim):
"Moe provides evidence that the following deviations occurred during the Title IX process . . . the investigator received no training on 'how to conduct Title IX investigation pursuant to [Grinnell College's] Title IX policy,' despite the Policy requiring investigation by 'a trained investigator[.]'"

Doe v. Columbia University, Case 1:20-cv-06770-GHW, at *55 (S.D.N.Y. Aug 1, 2021) (denying the University's MTD Doe's Title IX erroneous outcome claim in imposing interim suspension, Title IX selective enforcement claim in the Jane Doe 1 proceeding, Title IX erroneous outcome claim in the Jane Doe 4 proceeding, and Title IX erroneous outcome claim in the Jane Doe 3 proceeding because he plausibly stated the claims listed above):
"[John Doe] alleges that Columbia ignored evidence contradicting Jane Doe 1's version of events, such as the photographic evidence Jane Doe 1 herself submitted. Compl. ¶ 157. He also alleges that Columbia refused to investigate his claim regarding Jane Doe 1's sexual misconduct or consider evidence indicating that she and Jane Doe 3 were attempting to work together to prevent Plaintiff from graduating . . . [this] support[s] an inference that Columbia was biased against Plaintiff."

Doe v. Washington & Lee Univ., No. 6:19-CV-00023, 2021 WL 1520001, at *16 (W.D. Va. Apr. 17, 2021) (denying the University's motion for summary judgment because Doe adequately claimed a Title IX violation):
"Doe argues that [psychologist] Dr. Boller's presentation to [adjudication committee] HSMB members 'explain[ed] that different rules apply to victims, for whom memory gaps as well as inconsistent and evolving testimony demonstrate veracity.'…Doe argues that this was 'biased training,' which rested upon 'questionable 'trauma-informed' theories.'"

Doe v. American University, No. 19-CV-03097 (APM), 2020 WL 5593909, at *14 (D.D.C. Sep. 18, 2020) (denying the university's MTD under Title IX and breach of contract grounds):
"As evidence of a deficient investigation, Plaintiff points to three examples of things that were not 'thorough and impartial' about Quasem's investigation: (1) she 'failed to ask Ms. Roe and H.S. simple and obvious follow-up questions when the answers would have undermined Ms. Roe's allegations'; (2) she 'failed to interview at least three people to whom Ms. Roe gave contemporaneous accounts of the events of that night'; and (3) she 'withheld information and evidence gathered in the investigation of H.S. regarding the same set of events.' Pl.'s Opp'n at 33–34; see also ¶ 272."

Doe v. Elson S Floyd College of Medicine at Washington State University, No. 2:20-CV-00145-SMJ, 2020 WL 4043975, at *6 (E.D. Wash. July 17, 2020) (granting Doe a preliminary injunction for violations of due process and disability rights):
"However, at this stage, it appears to be a question of fact whether [the investigators'] relationships with the students involved in the events [the adjudicative board] SEPAC was meeting to review amounted to a personal interest 'that might impair, or reasonably appear to an objective, outside observer to impair, a person's independent unbiased judgment in the discharge of their official responsibilities.' Wash. Admin. Code § 504-26-125(4). Thus, Plaintiff has shown serious questions going to the merits of whether these SEPAC members' failure to recuse themselves violated her due process rights."

Doe v. Purdue University, 464 F. Supp. 3d 989, 995 (N.D. Ind. June 1, 2020) (finding that Purdue discriminated against Doe on the basis of sex, warranting a Title IX claim):
"During the interview, Defendants Wright and Rooze were uninterested in any exculpatory evidence. Rather, Defendants Wright and Rooze were interested in supporting Jane Roe's allegations. Defendants Wright and Rooze rejected the Plaintiff's request to observe security camera film which would have undermined the credibility of Jane Roe and other witnesses. Defendants Wright and Rooze also refused to provide the Plaintiff with exculpatory evidence such as the audio recordings of the interviews with Jane Roe and other witnesses. Some point thereafter, Defendants Wright and Rooze issued a 'Preliminary Report.' Purdue University denied the Plaintiff's repeated requests for a copy of the Preliminary Report. Purdue University also denied the Plaintiff's requests for copies of the audio recordings, documents, and other information gathered during the investigation. Instead, Purdue University only allowed the Plaintiff to review a copy of the Preliminary Report from a secure location. The Plaintiff took handwritten notes regarding the information in the Preliminary Report. Thereafter, Defendants Wright and Rooze submitted the Preliminary Report to administrators at Purdue University.

However, these Defendants refused to include exculpatory evidence within the Preliminary Report."

Doe v. Colgate University, 457 F. Supp. 3d 164 (N.D.N.Y. Apr. 30, 2020), reconsideration denied, No. 517CV1298FJSATB, 2020 WL 3432827 (denying University's motion for summary judgment because Doe plausibly states Title IX claims):
"Plaintiff contends that [Title IX Investigator] was not an impartial factfinder because her investigation was entangled with [NY State Police Officer's] criminal investigation and because she did not thoroughly investigate inconsistencies in Roe's accounts. The evidence supports Plaintiff's contentions." at 171-72.
"[A]fter Roe reported the incident to [Title IX Investigator] and stated that she wanted to file a criminal complaint, [Title IX Investigator] called [NY State Police Officer's] on his cell phone and put him in touch with Roe. Next, [NY State Police Officer's] asked [Title IX Investigator] to make a room on Defendant's campus available to him to interview witnesses, including Plaintiff; and he ultimately used that room to make the controlled phone call between Roe and Plaintiff and to 'interrogate' Plaintiff." at 172.
"Additionally, the evidence shows that [Title IX Investigator] failed to probe Roe regarding various internal inconsistencies raised in her accounts of what happened and countered by available, objective evidence. For example, Roe claimed that she accompanied Plaintiff back to his room around 12:30 or 1:00 a.m.; however, Plaintiff did not swipe his gate card to his residence hall until 2:03 a.m. Similarly, Roe maintained that she left Plaintiff's room at 4:30 a.m., but Defendant's records indicate that she did not return to her residence hall until 6:12 a.m."
"Furthermore, [Title IX Investigator] did not ask Roe to respond to Plaintiff's version of the events, even though Plaintiff responded to Roe's version of the events in order to defend himself from her allegations. For instance, Plaintiff claimed that they changed positions during the third act of intercourse, thus putting Roe on top and giving her 'ample opportunity to stop at any point[.]' Roe complained that she 'tried to push [Plaintiff] off of her and to squirm away, but she couldn't because [he] had his hands on her hips and kept holding her hips down' and that she 'thought to herself that she should "suck it up"' so that she could leave. Yet, despite these blatant inconsistencies, there is no indication that Brogan tried to reconcile Roe's and Plaintiff's versions of the incident."

Doe v. Rollins College, no. 6:18-cv-01069-Orl-37LRH, at *28 (M.D. Fla. Mar. 9, 2020) (granting in part Doe's partial motion for summary judgment because the university breached its contract with Doe regarding the university's sexual assault policy and denying in part the university's partial motion for summary judgment because Doe plausibly stated an issue of genuine fact regarding fundamental fairness):
"Doe presented evidence Rollins [College] didn't treat him fairly or equitably—deciding he was responsible before hearing his side of the story and failing to follow procedures mandated by the Policy and Responding Party Bill of Rights."

Doe v. Syracuse University, 440 F. Supp. 3d 158, 179 (N.D.N.Y. Feb. 21, 2020) (denying the University's motion for summary judgment because Doe's allegations plausibly state a Title IX selective enforcement claim):
"The university trained its investigators that inconsistency in the alleged female victim's account [is] evidence that her testimony is truthful, because of alleged trauma….Plaintiff alleges that the investigation relied on 'trauma informed techniques' that 'turn unreliable evidence into its opposite,' such that inconsistency in the alleged female victim's account. . .becomes evidence that her testimony is truthful."

Doe v. University of Maine System, no. 1:19-cv-00415-NT (D. Me. Feb. 20, 2020) (denying the university's motion to dismiss because Doe plausibly claim Title IX violations and a procedural due process violation):
"There may be an argument that Doe's report of these details—which occurred after the Settlement Agreement—was a new starting point for assessing how [the University of Maine System (UMS)] responded to his allegations. If so, any failure by UMS to investigate those allegations, while actively investigating the complaints against Doe, could potentially be a new act of selective enforcement or could have contributed to a hostile environment for Doe." at *17.
"The Plaintiff alleges that UMS had a 'retaliatory motive' when it took several adverse actions against him. See Compl. ¶¶ 137–43. Those adverse actions appear to be complete. See Compl. ¶ 140 (actions include barring Doe from his employment, suspending Doe, making public statements about Doe's Title IX case, providing Doe's Title IX case files to the press and others, and failing to disclose that Doe's disciplinary proceedings had been dismissed for exculpatory reasons)." at *26.

Bisimwa v. St. John Fisher College, et al., E2019005959, at *6-7, (N.Y. Sup. Ct. Nov. 20, 2019) (denying the school's MTD because Bisimwa plausibly states breach of contract and defamation claims):
"[Dean of Students and Residential Life and Investigator] Travaglini's response [to the adjudicative committee] was not complete and gave only a partial picture of the entire disciplinary history as the cited new criminal trial evidence and favorable expungement were not mentioned."

Harnois v. Univ. of Massachusetts at Dartmouth, No. CV 19-10705-RGS, 2019 WL 5551743 (D. Mass. Oct. 28, 2019) (denying UMass's 12(b)(6) motion on nine counts, including Title IX, due process, and fairness):
"During its investigation, UMass Dartmouth's Title IX office asked two female students in Harnois's graduate program to file complaints against Harnois but both refused to do so. Eventually, the Title IX investigator contacted every female student in Harnois's classes in search of derogatory information." at *3.
"Harnois alleges that during his Title IX investigation, Gomes did not interview any of Harnois' witnesses, and failed to consider potentially exculpatory evidence – such as, for instance, Harnois' discovery and reporting of a cheating scandal, which might have given several individuals a motive to disparage him." Id. at *6.

Doe v. Westmont College, 34 Cal. App. 5th 622, 625 (Cal. Ct. App. Apr. 23, 2019) (affirming the trial court's writ of mandate setting aside Westmont's determination and sanctions against Doe because of fairness issues):
"Westmont's investigation and adjudication of Jane's accusation was fatally flawed."

Noakes v. Syracuse University, no. 5:18-cv-00043-TJM-ML, at *27 (N.D.N.Y. Feb. 26, 2019) (denying the university's motion to dismiss because the plaintiff sufficiently established a plausible Title IX erroneous outcome claim):
"Plaintiff points to '[p]articular circumstances' he claims demonstrate bias, such as . . . using 'biased or negligent investigatory techniques;' and failing to correct improper investigatory methods."

Doe v. University of Mississippi, 361 F.Supp.3d 597 (S.D. Miss. Jan. 16, 2019) (holding that Doe successfully pleaded plausible claims of sex bias and procedural due process):
"Defendant Ussery's written report did not address or summarize the statements made by Bethany Roe to her physician or the police despite these statements containing highly exculpatory information. The report did not evidence any attempt by Ussery to interview the responding officers, persons who attended the pre-game party with Roe and Doe, or persons who the couple spent time with at the party. Furthermore, the cab driver who took Roe and Doe to the fraternity party and back to Doe's apartment was not interviewed and there was no assessment of any text messages or phone calls between Roe, Doe, the cab driver, or Roe's roommates." at 607.
"The report did not address nor contain Roe's medical record which clearly indicated that Roe did not believe she was raped." Id.
"But the presence of an allegedly biased panel member raises a due-process problem. A biased decision maker is constitutionally unacceptable." Id. at 611.
Doe v. Rollins College, 352 F. Supp. 3d 1205, 1212 (M.D. Fla. Jan. 16, 2019) (denying the university's motion to dismiss because Doe plausibly alleged college acted out of gender bias, violating Title IX, and college violated various provisions in sexual misconduct policy, warranting breach of contract): "Rollins [College] used a biased investigator who assessed Jane Roe's account as credible over Plaintiff's [because Jane Roe is a woman] [.]"

Powell v. Montana State Univ., No. CV 17-15-BU-SEH, 2018 WL 6728061, at *7 (D. Mont. Dec. 21, 2018) (finding that Doe has raised a valid Title IX claim):
"Issues of material fact continue to be present regarding Shaffer's conduct in the selection of Sletten as investigator and in the conduct of the investigation by Sletten without prejudgment of the issue of Powell's guilt. Correspondence and exchanges between Sletten, Shaffer, Perry, and Assistant Dean of Students Grusonik, viewed in the light most favorable to the Plaintiff, establish that questions of material fact remain as to whether Sletten's investigation was impartial and whether Shaffer unfairly prejudged OIE's investigation against Powell. Moreover, MSU's imposition of sanctions against Powell before any decision on the merits of Perry's complaint had been reached clearly calls into question whether MSU itself inappropriately prejudged the case."

Doe v. George Washington University, no. 1:18-cv-00553-RMC, at *15 (D.D.C. Dec. 20, 2018) (denying in part the university's motion to dismiss because Doe plausibly stated a Title IX violation, breach of contract violation, and a D.C. human rights' law violation):
"According to the texts, A.C. had no recollection of talking to Ms. Roe either during the Uber ride or in the bathroom of the dorm after Ms. Roe returned. Without explanation, the Appeals Panel found that this evidence 'generally corroborate[d]' Ms. Roe's statements that she had spoken with someone on the phone during the Uber ride and that she had spoken to A.C. about the assault when she got back to the dorm. This conclusion is divorced from the evidence and not explained[.]"

Doe v. The University of Mississippi, No. 3:16-CV-63-DPJ-FKB, 2018 WL 3560229, at *11 (S.D. Miss. July 24, 2018) (denying MTD for Plaintiff's Title IX claim because Doe stated a plausibly Title IX claim):
"Turning then to Doe's arguments regarding Ussery, he says her investigation was biased and flawed, that it resulted in an unfair report that was presented to the Judicial Council as the official report of the Title IX Coordinator, and that the panel itself had been trained in a way that prejudiced Doe's ability to be heard. As to that training, Doe makes the following points: (1) the training material "advises that a 'lack of protest or resistance does not constitute consent, nor does silence,'" (2) it "advise[s] the panel members that 'victims' sometimes withhold facts and lie about details, question if they've truly been victimized, and 'lie about anything that casts doubt on their account of the event,'" and (3) it explains that "when Complainants withhold exculpatory details or lie to an investigator or the hearing panel, the lies should be considered a side effect of an assault.""

Schaumleffel v. Muskingum University, no. 2:17-cv-000463-SDM-KAJ, at *23 (S.D. Ohio Mar. 6, 2018) (denying the University's motion to dismiss because plaintiff plausibly stated a Title IX erroneous outcome claim, promissory estoppel claim, negligence claim, and breach of contract):
"[T[he Community Standards Board [adjudicative body] was comprised of:
Muskingum [University] administrator Stacey Allan (Chair), and Muskingum faculty members Kenneth Blood, Hallie Baker, and Peter Gosnell. According to Muskingum's Student Handbook, for all cases resolved through the Community Standards Board process, the Community Standards Board shall be composed as follows: 'The [Community Standards] board is composed of students, staff and faculty members. Their responsibilities include determining whether an alleged is responsible or not responsible for violations of the Code of Student Conduct and recommending sanctions to the board chair….'(Doc. 1-17, Student Handbook at 50). The Student Handbook further specifies the following quorum requirement for proceedings of the Community Standards Board: 'Five members, with at least three students and two faculty/staff members will constitute a quorum.' (Id.). Plaintiff has sufficiently alleged a provision of the Student Handbook that Muskingum has not complied with."

Doe v. Rider Univ., 2018 U.S. Dist. LEXIS 7592, 2018 WL 466225, at *38 (D.N.J. Jan. 17, 2018) (finding that Doe had pled a plausible claim under breach of contract and Title IX):

"In addition, Plaintiff alleges Defendant breached a provision of the Policy stating, 'The Board will be composed of three (3) impartial and trained, professional staff members of the University community appointed by the Title IX Coordinator (or designee).' Specifically, he alleges: 'Just days before the December 4 formal hearing, [he] learned that the three designated Board members all reported, either directly or through others, to Dean Campbell. This was a clear conflict of interest. It was Dean Campbell who had urged Jane Roe and Jane Roe 2 to make a report to the [Police Department]. It was Dean Campbell who had suspended [Plaintiff] on October 19, 2015. It was Dean Campbell who had summarily declared that he was 'going against' [Plaintiff]. And, on information and belief, it was Dean Campbell who had directed the community standards panel to continue [Plaintiff's] interim suspension.' Despite this clear conflict of interest, [Defendant] failed to recuse any of the Board members.

Doe v. Ainsley Carry et al., Case No. BS163736, at *13 (Cal. Sup. Ct. Dec. 20, 2017) (holding that USC did not provide a fair, neutral, and impartial investigation):
"Respondents claim that their investigation was thorough, despite failing to obtain a statement from the only individual – J.S. – to purportedly see Roe immediately after the incident. Respondents argue that interviewing J.S. was not appropriate and that J.S. was not available to be interviewed… However, a statement from J.S. was appropriate in the instant case, as a material disputed fact existed."

In the Matter of John Doe v. Rensselaer Polytechnic Institute, No. 254952, at *12 (N.Y. Sup. Ct. Nov. 6, 2017) (granting New York state law Article 78 order annulling Respondent's initial determination that Petitioner violated RPI's Student Sexual Misconduct Policy):
"Before the meeting began, the interviewers informed Petitioner that he was the subject of a sexual misconduct complaint, and gave Petitioner a number of important documents relating to the investigation and his rights, and only gave him moments to consider them. The Court finds that the conduct demonstrated by Respondents towards Petitioner during the initial course of this investigation was a clear violation of his constitutional rights."

Rolph v. Hobart & William Smith Colleges, 271 F. Supp. 3d 386, 401-02 (W.D.N.Y. Sep. 20, 2017) (denying defendant's MTD regarding plaintiff's Title IX erroneous outcome claim because he plausibly stated a claim):
"Here, Plaintiff has adequately alleged facts that plausibly support at least a minimal inference of gender bias on the part of HWS. The allegations which support that inference include the following . . . failed to . . . conduct any follow-up interviews to resolve inconsistencies between witnesses' statements."

Doe v. The Trustees of the Univ. of Pennsylvania, 270 F. Supp. 3d 799, 816–17 (E.D. Pa. Sep. 13, 2017) (holding that Defendant violated Title IX under an erroneous outcome theory and procedural due process):
"Specifically, the Complaint alleges that officials who handled Plaintiff's case were trained with, among other materials, a document called 'Sexual Misconduct Complaint: 17 Tips for Student Discipline Adjudicators.' That document warns against victim blaming; advises of the potential for profound, long-lasting, psychological injury to victims; explains that major trauma to victims

may result in fragmented recall, which may result in victims 'recount[ing] a sexual assault somewhat differently from one retelling to the next'; warns that a victim's 'flat affect [at a hearing] does not, by itself, show that no assault occurred'; and cites studies suggesting that false accusations of rape are not common. At the same time, the document advises that the alleged perpetrator may have many 'apparent positive attributes such as talent, charm, and maturity' but that these attributes 'are generally irrelevant to whether the respondent engaged in non consensual sexual activity.' It also warns that a 'typical rapist operates within ordinary social conventions to identify and groom victims' and states that 'strategically isolating potential victims can show the premeditation' commonly exhibited by serial offenders. The Complaint asserts that such guidance 'encourage[s] investigators and adjudicators to believe the accuser, disregard weaknesses and contradictions in the accuser's story, and presume the accused's guilt.'" at 816-17.

The university's training document "warns against victim blaming; advises of the potential for profound, long-lasting, psychological injury to victims; explains that major trauma to victims may result in fragmented recall, which may result in victims 'recount[ing] a sexual assault somewhat differently from one retelling to the next'; warns that a victim's 'flat affect [at a hearing] does not, by itself, show that no assault occurred'; and cites studies suggesting that false accusations of rape are not common….In light of these same allegations, we also conclude that the Complaint plausibly alleges that the investigators were not 'appropriately trained as investigators in handling sexual violence cases.'" at 817.

John Doe v. Pennsylvania State University, 276 F. Supp. 3d 300, at 313 (M.D. Pa. Aug. 18, 2017) (granting Doe's motion for a temporary restraining order against the university because Doe demonstrated likelihood of success on merits of due process claim):
"I specifically note that, during the hearing, [Title IX Compliance Specialist] Ms. Matic stated repeatedly that her ultimate role is 'be impartial and objective to both parties' and that is this goal necessitates that she redact information provided. I preliminarily find that those statements to be in conflict and may work to violate Doe's due process."

Mancini v. Rollins Coll., M.D. Fla. No. 616CV2232ORL37KRS, 2017 WL 3088102, at *5 (M.D. Fla. July 20, 2017) (denying MTD on procedural due process grounds):
"The Court agrees with Plaintiff that one may plausibly infer that the Decision was erroneous 'given the pleaded facts' that: [] two 'esteemed Rollins' Wellness Center members expressed serious concerns about the integrity of the Investigator and the investigation.

Tsuruta v. Augustana University, No. CIV. 4:16-4107-KES, 2017 WL 11318533, at *3 (D.S.D. June 16, 2017) (denying defendant's MTD because plaintiff plausibly states a breach of contract claim and negligence claim):
"[T]he complaint states the investigator failed to interview relevant witnesses and detect exculpatory emails deleted before the complainant gave the emails to the investigator."

Doe v. Amherst College, no. 3:15-cv-30097-MGM, at *32 (D. Mass. Feb. 28, 2017) (denying the university's motion for judgment on the pleadings because Doe plausibly stated breach of contract, national origin discrimination, and Title IX violations):
"[A] jury could reasonably infer [Amherst] College acted in a manner that prevented [Doe] from receiving the 'thorough, impartial and fair' investigation promised in the Student Handbook and thereby also denied him a fair adjudication of the complaint against him."

Matter of Doe v. Cornell University, EF2016-0192. 2017 NY Slip Op 30142(U) at *3 (N.Y. Sup. Ct. Jan. 20, 2017) (denying Cornell's MTD due to Doe's plausible Title IX claim):
"The Court concludes that Respondents' determination to defer investigation of the Petitioner's Policy 6.4 is arbitrary and capricious and without a rational basis. Once Respondents promulgated policies and procedures for the adjudication of complaints of misconduct, they are not permitted to ignore them for administrative, procedural or any other reason. The Court concludes that Respondents improperly deferred investigation into Petitioner's claim of sex discrimination in contravention of their established policies and procedures."

Collick v. William Paterson Univ., D.N.J. No. 16-471 (KM) (JBC), 2016 WL 6824374, at *11 (D.N.J. Nov. 17, 2016), adhered to on denial of reconsideration,N.J. No. CV 16-471 (KM) (JBC), 2017 WL 1508177 (D.N.J. Apr. 25, 2017), and aff'd in part, remanded in part, 699 Fed. Appx. 129 (3d Cir. 2017) (denying MTD on Count 1 for failure to state a Title IX claim because plaintiff plausibly states a Title IX claim):
"The Complaint [alleges] that '[a]s a purported female victim, the Accuser's allegations against the male plaintiffs were accepted as true without any investigation being performed and without the development of any facts or exculpatory evidence.' And the Complaint does allege that Collick and Williams were not given the opportunity to respond or explain themselves, did not receive proper notice of the specific charges, were not permitted to confront or cross-examine their accuser, were not given a list of witnesses against them, and more generally were not afforded a thorough and impartial investigation."

Doe v. Brown University, 210 F. Supp. 3d 310, 339 (D.R.I. Sep. 28, 2016) (granting a preliminary injunction against defendant for breach of contract):
"[Investigator] Perkins' assessment that there was insufficient evidence to support [accused student] Doe's fabrication claim was particularly problematic given that she had refused to ask for evidence that might have proven it so and been exculpatory to Doe. …The problem here was that Perkins made the initial decision to include the conspiracy claim and corresponding character evidence, but then chose not to complete the evidence-gathering, and went on to say that there was insufficient evidence to support Doe's fabrication claim. Because of this, her failure to request the text messages between Ann and Witness 9 was a violation of Doe's right '[t]o be given every opportunity to . . . offer evidence before the hearing body or officer.'"

Ritter v. Oklahoma City Univ., W.D. Okla. No. CIV-16-0438-HE, 2016 WL 3982554, at *2 (W.D. Okla. July 22, 2016) (denying MTD for failure to state a Title IX claim because plaintiff plausibly stated a Title IX claim):

"[C]onsidering all the allegations in the amended complaint, including the asserted facts underlying plaintiff's alleged offense, the alleged manner in which the investigation and disciplinary process were conducted, the allegation that females facing comparable disciplinary charges have been treated more favorably than plaintiff and the assertion that, because of his gender, the sanctions imposed on plaintiff were disproportionate to the severity of the charges levied against him, the court concludes plaintiff has stated a selective enforcement claim."

Doe v. Weill Cornell Univ. Med. School, 1:16-CV-03531 (S.D.N.Y. May 20, 2016) (granting Doe a TRO for fairness issues): "the investigative report dismissed any inconsistencies as attributable to the complainant's anxiety."

Doe v. Ohio State University, No. 2:15-CV-2830, 2016 WL 1578750, at *3 (S.D. Ohio Apr. 20, 2016) (granting a preliminary injunction against the University for fairness and procedural due process issues):
"Plaintiff has introduced evidence that has given this Court significant pause as to many of the practices that the university employs and the rules it has established to govern its investigative and disciplinary hearing process."

Doe v. Rector & Visitors of George Mason University, 149 F. Supp. 3d 602, 619 (E.D. Va. Feb. 25, 2016) (granting summary judgment for Doe on Title IX grounds):
"The undisputed record facts reflect that, as of the time plaintiff was allowed to present his defense before [university investigator] Ericson, Ericson admits that he had 'prejudged the case and decided to find [plaintiff] responsible' for sexual assault."

Doe v. Georgia Board of Regents, No. 1:15-cv-04079-SCJ, at *37-38 (N.D. Ga. Dec. 16, 2015) (violating Doe's procedural due process rights because of an impartial investigation):
"To put it bluntly, [investigator] Paquette's testimony at the preliminary injunction hearing about the course of the investigation and the manner in which he made certain investigatory decisions was very far from an ideal representation of due process. (Pg. 37)…Much remains for the Court's consideration as to whether Mr. Paquette's investigation veered so far from the ideal as to be unconstitutional."

Doe v. Salisbury University, no. 1:15-cv-00517-JKB, at *21 (D. Md. Aug. 21, 2015) (denying the university's motion to dismiss because Doe plausibly claimed an erroneous outcome Title IX violation and a negligence violation):
"[Assistant Vice President of Student Affairs, Dean of Students, and Title IX Coordinator] Randall-Lee and [Student Conduct Administrator] Hill presented "false information" to the [Community] Board [or the adjudicative body]."

Doe v. Washington and Lee University, No. 6:14-CV-00052, 2015 WL 4647996 (W.D. Va. Aug. 5, 2015) (denying the University's MTD because Doe's allegations plausibly support a Title IX claim):
"In the course of the investigation, Ms. Kozak and Mr. Rodocker ultimately interviewed at least nine people. These witnesses included two of Plaintiff's four recommended witnesses and at

least eight witnesses recommended by Jane Doe…When Plaintiff questioned why two of his suggested witnesses were not interviewed, Ms. Kozak stated that the interviews would not be necessary, as they already had enough facts." at *4.

"During discovery, W&L produced a summary of ten years' worth of HSMB panel findings, between the 2008-09 and 2018-19 academic years. Out of 35 total allegations, 27 included male respondents. Of those 27, 14 claims proceeded to a hearing. Of those 14 cases that went to a hearing against male respondents, 9 male respondents were found responsible and 5 were found not responsible. One case had a male complainant and male respondent; four cases had both female complainants and respondents." Id. at *11.