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UNITED STATES SUPREME COURT HOLDS THAT TITLE IX DOES NOT FORECLOSE STUDENT'S ACTION FOR DAMAGES UNDER SECTION 1983 FOR UNCONSTITUTIONAL GENDER DISCRIMINATION IN SCHOOL

In Fitzgerald v. Barnstable School Committee (2009) 2009 WL 128173, ___ U.S. ___, the United States Supreme Court held that Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681(a) ("Title IX"), is not the exclusive remedy for alleged gender discrimination in schools, or a substitute for suit under 42 U.S.C. § 1983 ("section 1983") to enforce constitutional rights.

In 2000-2001, Lisa and Robert Fitzgerald's daughter ("student") was a kindergartner in the Barnstable, Massachusetts, school system ("School Committee"). She rode the bus to school every day, and one day told her parents that a third grade boy was bullying her into lifting her skirt and pulling down her underpants. The student's mother immediately contacted the school principal who investigated the incident. The boy denied the allegations and the principal could not otherwise corroborate the student's allegations. The local police also conducted an independent investigation and concluded that there was insufficient evidence to bring a criminal complaint against the boy.

Based on the police investigation and on the school's investigation, the principal concluded there was insufficient evidence to warrant discipline of the boy. Instead, the principal proposed remedial measures, such as transferring the Fitzgeralds' daughter to another bus or leaving rows of empty seats between the older students and kindergartners. The Fitzgeralds felt that these proposals punished their daughter instead of the boy, and asked the school to transfer the boy to another bus or put a school monitor on the original bus. The School Committee's superintendent did not act on these proposals.

The Fitzgeralds began transporting their daughter to school, but she reported that incidents of unsettling harassment-related events were continuing at school. The Fitzgeralds reported each incident to the principal. As a result, the Fitzgeralds' daughter was reluctant to attend school and had an unusual amount of absences that school year.

The Fitzgeralds filed suit in federal district court alleging gender discrimination, seeking relief under Title IX against the School Committee, and under section 1983 for violations of Title IX and the Equal Protection Clause of the United States Constitution against the School Committee

and its superintendent. In response to motions to dismiss and for summary judgment filed by the School Committee and the superintendent, the district court dismissed each of the Fitzgeralds' claims. The Court of Appeals affirmed.

The United States Supreme Court reversed and remanded the decision, holding that in a lawsuit alleging unconstitutional gender discrimination, a plaintiff may raise both claims for relief under Title IX and under section 1983 to enforce the Equal Protection Clause of the United States Constitution. Title IX prohibits gender-based discrimination in federally-funded education programs and has been interpreted to allow plaintiffs to sue schools over student-to-student harassment. Section 1983 allows a plaintiff to sue a public official who violates rights secured by the federal constitution or statutes.

The Court's holding in Fitzgerald is based on a distinction between Title IX and other statutory enactments that the Court previously held precluded plaintiffs' use of section 1983 for relief. The Court found that Congress did not intend Title IX to be an exclusive remedy. Central to the Court's reasoning was the fact that Title IX has no administrative exhaustion requirement and no notice provisions and thus proceeding directly to court for remedies under section 1983, which does not circumvent remedies and procedures under Title IX. Further, the remedies available under Title IX and section 1983 diverge, including the right to seek redress from individuals under section 1983 that is not provided for under Title IX. These differences establish that Congress did not intend Title IX to constitute the only means to redress allegations of gender discrimination in school.

This decision confirms that Title IX is not the exclusive remedy for plaintiffs alleging gender discrimination in school, and that such plaintiffs may concurrently seek damages and other relief under section 1983 for violation of their constitutional right to free from gender-based discrimination. Significantly, the viability of gender discrimination claims relating to student-on-student sexual harassment now opens the door for damage awards under section 1983 against school administrators as individuals.

If you have questions about this decision, Title IX, or individual liability under section 1983, please contact one of our seven offices statewide.

As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.

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