

## **LIMITING TITLE IX LIABILITY IN DOE V. THE CITADEL**

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### **Education Law Notes**

10.30.2017

A decision issued by the Court of Appeals of South Carolina underscores the limitations of college and university liability under Title IX. In John Doe v. The Citadel, the court declined to extend standing to sue under Title IX to an individual who had no relationship to the educational institution but had been sexually assaulted by a graduate and one-time employee of the school. The genesis of Doe was the egregious misconduct of Louis ReVile, a Citadel graduate who served as a camp counselor at a Citadel summer camp from 2001-2003. In April 2007, the father of a former camper notified The Citadel that ReVile – who at the time of the accusation was serving as a part-time tutor at The Citadel’s writing center -- had engaged in sexual misconduct with the camper in 2002.

The Citadel spoke with the former camper, who confirmed the accusations, and traveled to Texas to meet with the family, although it subsequently lost contact with them. It also questioned ReVile, who denied the allegations. Additionally, the school contacted potential witnesses, who were unable to corroborate the accusations. Subsequently, The Citadel ended its investigation without reporting the accusations to law enforcement. ReVile moved on, and in October 2011 confessed to abusing 23 boys while working in various educational and athletic positions in the Charleston, South Carolina area. The plaintiff, John Doe, was one of them, ReVile having begun assaulting him in 2005, and Doe subsequently sued The Citadel on March 19, 2012, alleging, in part, negligence and gross negligence.

The gist of the plaintiff’s lawsuit was that The Citadel’s actions created a risk of harm to him as it allegedly was in the best position to warn or prevent ReVile from engaging in his subsequent sexual deprecations but failed to do so. The trial court granted the school’s summary judgment motion, holding that The Citadel did not owe Doe a duty of care. The Court of Appeals affirmed, rejecting Doe’s claim that by voluntarily undertaking responsibility for investigating claims of sexual abuse, The Citadel had created a duty of care. The appellate court noted that under common law, the school’s actions would have had to have *increased* the risk of harm, which clearly was not the case here as Doe’s sexual abuse started in 2005, two years *prior* to the initial April 2007 accusation about ReVile, and ended in Summer 2007.

Of perhaps greater interest, the plaintiff also argued that Title IX imposed a duty upon The Citadel not to conceal ReVile’s sexual abuse following the April 2007 allegations. Given that ReVile’s abuse of Doe ended in Summer 2007, around the same time The Citadel concluded its investigation, it is difficult to understand how the school’s “concealment” of its investigation would have had any effect upon Doe. In any event, the

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Court of Appeals noted that to establish a statutorily-created duty of care, Doe would have to prove both that Title IX’s “essential purpose” was to protect against the kind of harm Doe had suffered and that Doe was a member of the class of persons Title IX was intended to protect. Although he could perhaps establish the first prong of that two-part test, the court held that he could not satisfy the second.

The court reasoned that “Title IX intends to protect participants and students of educational programs,” and that “[o]n its face, the statutory language of Title IX . . . applies only to students and participants in educational programs.” Consequently, because Doe “was never a student or participant in any educational program at The Citadel, he is not a member of the class of persons Title IX intends to protect.” Thus, the Court of Appeals upheld the trial court’s entry of summary judgment in favor of The Citadel.

### **What Does It Mean?**

When confronted with conduct that was, to quote the Court of Appeals of South Carolina, “beyond despicable,” it is a temptation to provide the victims of such misconduct with the remedy they seek. The court, however, correctly declined to expand Title IX’s parameters as the statute is not intended to have universal application, and opening its protections to individuals who, like Doe, have absolutely no connection to a particular school would essentially transform colleges and universities into strict guarantors of their present -- and even former -- employees’ and students’ off-campus conduct, spawning an ultimately ruinous torrent of lawsuits. Such an outcome would be far beyond Title IX’s “essential purpose,” which is to ensure that schools act in a manner calculated to protect its students from sexual discrimination and harassment.

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