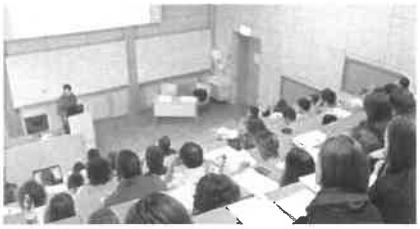
'Continuing violation doctrine' can defeat Title IX limitations defense

By: Barry Bridges September 13, 2018



The judge rejected the defendant university's argument that the plaintiff's Title IX hostile environment/sexual harassment claims were barred by the three-year statute of limitations

A U.S. District Court judge has concluded that the "continuing violation doctrine" applies in Title IX cases and can vitiate a statute of limitations defense in hostile environment claims.

In considering Brown University's motion to dismiss in a suit brought against it by a male African-American student accused of sexual assault by a white female classmate, Judge John J. McConnell Jr. rejected the school's argument that the plaintiff's Title IX hostile environment/sexual harassment claims were barred by the three-year statute of limitations.

In McConnell's view, allegations surrounding a purported second victim occurred within the filing period and were part of an ongoing series of events.

"The court cannot ignore the direct link between the pre-limitations period conduct and the allegations that fall within the three-year anchor period," he wrote.

Additionally, the doctrine applied to the plaintiff's Title VI claim, the judge said, which allowed the plaintiff to move forward with charges of racial discrimination.

However, McConnell agreed with the university that other elements of the lawsuit relating to discrete acts outside the limitations window should be dismissed. He also tossed some state law claims as being implausible.

The 32-page decision is *Doe v. Brown University*, Lawyers Weekly No. 52-075-18. The full text of the ruling can be found here.

Extension of doctrine

"This is the first court within the 1st Circuit to recognize the continuing violation doctrine in a Title IX context, so it's very exciting for us," said Sonja L. Deyoe of Providence, who represents plaintiff John Doe. "The doctrine recognizes that in a hostile environment, it's very common to have acts that go on for a long period of time."

With McConnell relying on holdings from the 2nd and 9th circuits and with his determination regarding Title VI, Deyoe called it "a double extension."

Barton Gilman's Greg Vanden-Eykel said the ruling was an important addition to Rhode Island's Title IX jurisprudence.

"Based on the facts of this case, I'm not surprised at the outcome. It's certainly hard to say here that one isolated event is the end-all-and-be-all," Vanden-Eykel said.

And even though Doe's case involves two alleged victims over a span of time, the Providence attorney said he was confident the ruling would transfer to other fact situations.

"For example, I think it would apply where one victim suffered pervasive harassment around the same nexus of connected facts," he said.

The holding puts educational institutions on notice that they should be aware of broader patterns and should consider things holistically as opposed to focusing only on discrete events, Vanden-Eykel said.

"But applying the doctrine is very fact specific, and Judge McConnell parsed out the specific allegations here," he said. "The rule is not a catchall and has its limitations."

Newport attorney Jonathan Cook said the continuing violation doctrine lends itself well to claims under Title IX or other statutes involving any type of discrimination.

"It is important because a hostile environment often is only visible to schools when viewed in the aggregate," he

said.

As it pertains to Title IX, Cook said that a hostile environment is often created by an academic institution's deliberate, yet subtle, series of acts of indifference to the underlying causes over a time period that is impossible to define.

"That fluid nature of a hostile environment, paired with violations too small to be actionable on their own, creates a recipe for disaster when it comes to surviving the statute of limitations," he added.

According to Cook, the doctrine essentially allows individual acts committed by an academic institution for which the statute of limitations has run to be taken in the aggregate and timely filed in the eyes of the court.

The takeaway for attorneys representing college students, Cook said, is to make some type of record of even small acts that may not be actionable in and of themselves. The sum of all the parts could eventually support a hostile environment claim.

"You want to be able to articulate earlier things that, by themselves, would not necessarily satisfy the school's threshold of a hostile environment," he said.

Counsel for the university, Steven M. Richard of Nixon Peabody, said his client was pleased that the court's ruling narrowed the scope of the case and that Brown was prepared to defend itself on the merits.

> *"This is the first court within the 1st Circuit to recognize the continuing violation doctrine in a Title IX context, so it's very exciting for us."*
>
> *— Sonja L. Deyoe, Providence*

Conduct proceedings

In fall 2013, plaintiff John Doe, an African-American freshman at Brown University, met Jane Doe, a white sophomore, at a local bar. They flirted and imbibed, even though both were underage.

When the pair later began kissing, Jane acted aggressively. She bit John's lip, choked him, pushed him against a wall, and tried to keep him from leaving.

Jane filed a written complaint against John with the university in December 2013, and he was charged with sexual misconduct and underage drinking. John subsequently complained to Brown about his encounter with Jane, but no charges were brought against her.

The Student Conduct Board found John "responsible" for "nonconsensual contact and underage drinking" and imposed a one-year deferred suspension against him. The board also issued a protective order specifying that the two were not to have contact.

At the end of the semester in May 2014, John received two letters from Brown administrators: one alleging that he may have committed sexual misconduct involving another Brown student, Sally Roe (who John said he met and "made out" with at a party), and the other barring him from campus on an interim basis. Significantly stressed, John failed two exams and was placed on academic warning.

The university offered no explanation on the new charges, but in August 2014, Brown informed John that the investigation had concluded and that he was free to return and continue his studies.

Back on campus, John felt overwhelmed by events and threw himself in front of a moving vehicle. Upon his release from a four-day hospital stay, a dean advised him that he could face hearings on whether he violated the no-contact order and intimated that the university could revive the allegations involving Sally. Within the week, John left campus for that year.

When he returned for the 2015-2016 academic year, Sally informed John that Jane had played a "major role" in her complaint against him and that the school had in effect manufactured the second claim against him.

Asserting that he had been targeted because of his gender and race, John filed a complaint on May 4, 2017. Later amended, his 12 counts included alleged violations of Title IX (hostile education environment/sex discrimination), Title VI and 42 U.S.C. §1981 (racial discrimination), and the Rhode Island Civil Rights Act.

In its motion to dismiss, Brown argued that the Title IX and Title VI counts were barred by the three-year statute of

limitations.

'Direct link' to earlier events

Under the limitations defense put forth by the university, all of the allegations involving Jane that took place during the 2013-2014 academic year would have been barred.

John, on the other hand, maintained that the continuing violation doctrine as enunciated by the U.S. Supreme Court in 2002's *National Railroad Passenger Corp. v. Morgan* countered that defense.

McConnell wrote that the 1st Circuit defined the doctrine as one allowing "damages for otherwise time-barred allegations if they are deemed part of an ongoing series of discriminatory acts and there is some violation within the statute of limitations period that anchors the earlier claims."

And, while the dispute at hand presented an "open question" on whether the theory applied generally to claims under Title IX and VI in the 1st Circuit, McConnell answered that question in the affirmative. He distinguished between discrete discriminatory acts, which are not actionable if time barred, and claims based on a hostile environment.

"This court ... concludes that the doctrine announced in *Morgan* can apply to Title IX claims where there is a continuing violation. By extension, this applies to Title VI as well," McConnell said.

The judge then turned to John's particular Title IX and Title VI claims.

"At first blush, Brown's two investigations into John appear to be discrete, separable events with independent beginnings and ends," McConnell wrote. "That said, the court believes that the facts, as pleaded, tell the tale of a singular ongoing and evolving interaction between John and Brown, motivated by discriminatory animus, which gives rise to certain of his claims."

The judge pointed out that the initial investigation, though seemingly outside the statute of limitations, was the source of the discrimination faced by John during the second investigation involving Sally.

For example, without the first investigation, McConnell said, Brown would not have placed John on deferred suspension. With a dean telling John that such status "pretty much" meant he would be found guilty in the school's investigation of the Sally incident, John fell into a depression, failed classes, attempted suicide, and missed a year of school.

"The damages and discrimination he suffered as a result of the Sally investigation, then, are directly linked to the allegations and investigations brought upon him by Jane," McConnell concluded.

He continued: "When there is a hostile environment, an unlawful practice 'cannot be said to occur on any particular day. It occurs over a series of days or perhaps years and, in direct contrast to discrete acts, a single act ... may not be actionable on its own.'"

The continuing violation doctrine therefore kept John's Title IX hostile environment counts afloat, although the same was not true for his "erroneous outcome" and "selective enforcement" claims, as they pertained to the initial investigation concerning Jane and fell outside the limitations period.

CASE: *Doe v. Brown University*, Lawyers Weekly No. 52-075-18

COURT: U.S. District Court

ISSUE: Can the continuing violation doctrine defeat a statute of limitations defense in Title IX claims?

DECISION: Yes

Issue: SEPT. 17 2018 ISSUE

YOU MIGHT ALSO LIKE

Administrative law – Social Security benefits – Reversible error
October 1, 2018

Civil procedure – Motion to dismiss – In forma pauperis
October 1, 2018

Civil rights – Prisoners – Constitutional law – Cruel and unusual punishment

October 1, 2018