
Title IX Reform: A California Court Takes the Lead

By Carol Matheis

California

John Doe v. University of Southern California

About the Author:

Carol Matheis practices business litigation and insurance law in Newport Beach, California.

Note from the Editor:

The Federalist Society takes no positions on particular legal and public policy matters. Any expressions of opinion are those of the author. We invite responses from our readers. To join the debate, please email us at info@fedsoc.org.

There are no real winners in the case of *John Doe v. University of Southern California*,¹ but the outcome of the case bodes well for other cases appealing the results of Title IX hearings on college campuses.

In April 2014, in the spring of his freshman year at USC, 18-year-old Bryce Dixon—known as “John Doe” in the litigation—was involved in a drunken sexual encounter with “Jane Roe,” a 22-year-old fifth-year student who worked as an athletic trainer at the school. The encounter occurred after a night of heavy drinking at a party. At the urging of her boyfriend, who did not attend the party, Jane Roe visited the campus Rape Treatment Center and reported the incident as a rape.

Evidence from cellular phone records indicates that Jane Roe did not initially consider the encounter a rape, but that she characterized it that way because it compromised her job as a trainer and her relationship with her boyfriend. Cellular phone evidence also indicated that Dixon felt remorse for allowing the encounter to occur while the two parties were drunk.

The investigation, hearing, and conclusion followed a pattern that is common in Title IX hearings on college campuses: Dixon was afforded no opportunity to confront or cross-examine witnesses, and a single college administrator occupied the roles of investigator, prosecutor, factfinder, and sentencer. This administrator, citing a preponderance of the evidence, found that Dixon knew, or should have known, that Jane Roe was too drunk to consent to sexual activity.

USC expelled Dixon, and in November 2014, he filed for a writ of administrative mandate in the Los Angeles County Superior Court, claiming the school’s Title IX investigation lacked due process. The questions presented by any petition for writ of administrative mandate in California are whether the agency or tribunal that issued the decision being challenged proceeded without, or in excess of, jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion.² In April 2017, the court denied Dixon’s petition, finding that substantial evidence supported the decision by USC to expel him. Dixon appealed.

In its opinion, the Second District Court of Appeal, Seventh Division, reviewed the evidence and chronology of events in the case. The court found that key evidence such as the alleged victim’s medical records from the Rape Treatment Center, her clothing, and the testimony of her boyfriend were not obtained by the adjudicator. The court stated that, while students in disciplinary hearings are not entitled to the due process protections of a criminal trial, they are entitled to the minimum due process guarantees of notice and a meaningful opportunity to present their case. Furthermore, the court found that where a student

1 ___ Cal. Rptr. ___ (Ct. App. 2018), available at <http://www.courts.ca.gov/opinions/documents/B271834.PDF>.

2 Cal. Code of Civil Pro. § 1094.5(b).

faces serious discipline and the university's determination is based on witness credibility, the adjudicator must be able to observe the demeanor of those witnesses in deciding which witnesses are more credible. Because the adjudicator did not examine key evidence, failed to afford Dixon due process, and did not observe live witness testimony, the Court of Appeal held that Dixon was denied a fair hearing.

In a footnote, the Court of Appeal cited a new proposed rulemaking by the U.S. Department of Education. The court noted that the Department of Education withdrew the September 27, 2011 "Dear Colleague" letter that set forth guidelines for how universities should investigate and resolve complaints of sexual misconduct. In its place, the Department has proposed regulations that would prohibit an investigator from serving as an adjudicator in the same case, require universities to hold a live hearing, and require an opportunity for the accused student's "advisor" to cross-examine the complainant and all witnesses in person or through a technological substitute. Apparently persuaded by these proposed standards, the three-judge panel of the Court of Appeal found that Dixon was denied a fair hearing. The court also noted that, because Dixon had been denied a fair hearing, it did not have to consider whether constitutional requirements for fair hearings differ depending on whether the university implicated is public or private.

The court invoked other California school disciplinary hearing precedents to support various pillars of its ruling. However, the court was not entirely clear about exactly what kind of hearing is required, and it danced around establishing a one-size-fits-all rule. It appears that obvious unfairness and lack of administrative due process in campus sexual misconduct disciplinary hearings will not be endlessly tolerated, at least where this California court is concerned. This ruling, along with the proposed revised Department of Education regulations, could have a positive effect at other universities in California, causing them to reexamine and consider revising their Title IX policies and procedures.

