

It's Not Court

What You Say in Title IX Proceedings
Can and Might Be Used Against You

February 2026

Presenters



Kimberly C. Lau

Principal, Chair of Title IX and
Education Practice Group

Kimberly.Lau@offitkurman.com

347.589.8549



Blaze Bowers

Assistant Vice President for Civil
Rights Compliance & Title IX/EEO
Coordinator

bmb397@drexel.edu

865-348-8600

Key Takeaways:

1

How defamation issues intersect with Title IX and conduct processes

2

Key risk factors for institutions and individuals

3

Promising practices for communication, documentation, and policy

4

Case examples of defamation litigation in higher education

5

Strategies to help protect the reputations of all parties involved

Hypothetical

- Student reports being harassed on campus by another student calling her a rapist.
- Rumor stems from a recent sexual encounter after both parties had been drinking.
- She believed the other student could consent and is confused about the accusation.
- Rumors started small but have now spread widely, causing significant emotional distress.
- Harassment has led to declining class attendance and falling grades.
- She has been asked to step down from clubs and her sorority, losing all social support.
- Currently feels like an outcast with no friends or community.
- Student wants to know what the school can do to address the harassment and provide support.

What Defamation is vs. What Defamation is Not

- Defamation requires a false, defamatory statement of fact, about the plaintiff, published to a third party, with the requisite fault, causing reputational harm, and not protected by privilege or defense.
- Under Florida law, the elements of a defamation claim are:
 - the defendant published a false statement;
 - about the plaintiff;
 - to a third party; and
 - the falsity of the statement caused injury to the plaintiff.



Elements of Defamation

Publication

The defendant published a statement to a third party (someone other than the plaintiff).

False Statement of Fact

The statement must be false.

It must be a statement of fact, not pure opinion.

- Pure opinion is protected.
- “Mixed opinion” (opinion implying undisclosed false facts) may be actionable.

Concerning the Plaintiff

The statement must be “of and concerning” the plaintiff.

The plaintiff must be identifiable, either directly or by implication.

Fault

Public figure: Plaintiff must prove actual malice (knowledge of falsity or reckless disregard for truth).

Private individual: Plaintiff must prove at least negligence as to falsity.

Damages

The plaintiff must show actual damages, unless the statement constitutes defamation per se.

Defamation Per Se in Florida - Damages are presumed if the statement:

Charges the plaintiff with committing a crime

Alleges the plaintiff has a loathsome disease

Tends to subject the plaintiff to hatred, distrust, ridicule, or contempt

Is likely to injure the plaintiff in their profession, trade, or business

Defenses/Exceptions to Defamation - Privileges

Absolute privilege applies to statements made in:

- Judicial proceedings
- Legislative proceedings
- Certain executive or quasi-judicial proceedings (state-specific standards)

Qualified privilege applies in common-interest or good-faith contexts.

- To overcome qualified privilege, plaintiff must prove **express malice** (primary motive to injure).

Defamatory Statements: “She is a rapist,” “She plagiarized on that exam,” etc.

Non-Defamatory Statements/Opinion Statements: “He made me feel bad,” “He did a bad thing,” etc.

***Khan v. Yale University*, 347 Conn. 1, 295 A.3d 855 (Conn. 2023) (Connecticut)**

Factual summary



Procedural posture



Holdings



Takeaways for students and takeaways for institutions

***Pampu v. Wingo*, 446 S.C. 236, 918 S.E.2d 717 (Ct. App. June 11, 2025) (South Carolina)**

Factual summary



Procedural posture



Holdings



Takeaways for students and takeaways for institutions

Le v. University of Medicine and Dentistry of New Jersey, No. 08-cv-00991 (SRC), 2009 WL ____ (D.N.J. May 4, 2009) (New Jersey)

Factual summary



Procedural posture



Holdings



Takeaways for students and takeaways for institutions

Columbia University Protest Cases

In 2025–2026, Columbia University faced intense First Amendment scrutiny, ranking among the lowest for free speech, following massive pro-Palestinian protests, occupation of Hamilton Hall, and subsequent disciplinary actions. Key legal battles involved challenges to university protest restrictions, the targeting of protestors for deportation, and lawsuits against faculty supporting student demonstrators.



Legal Limitations on Administrative Response



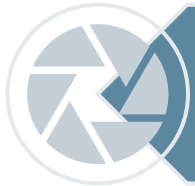
First Amendment: How does it protect speech? How does it limit schools' response to student defamation?



Federal statutory limits on gag orders



Public v. Private Schools: Differences in standard/rights



2020 Title IX Regulations: Requirements for Impartiality, Mutuality, and Equitable Treatment of Parties



Private Schools: Your Internal Policies & Procedures

How Can Administrators Help Students?

- No Contact Orders – when are they appropriate? Standard
- Wall Street Journal article on NCOs – trend of using them to avoid interpersonal conflict

Example: I reported this behavior to University administrators and requested a No Contact Directive. The Office of Student Conduct denied this request, stating that because there was no threat of physical harm, no directive was warranted. The behavior continued thereafter.

- Conduct v. Civil Rights Offices' NCDs
- Equitable and fair treatment of parties (e.g., mutuality of NCDs under Title IX)
- Clear expectations and communication
- Effective and responsive training
- Well-planned and delivered intake, pre-hearing, and other touch points with parties
- Clear, consistent, and accessible policies

ESSAY

College Students Are Using 'No Contact Orders' to Block Each Other in Real Life

Originally meant to protect victims of sexual harassment or assault on campus, NCOs have become the go-to solution for a generation uncomfortable with face-to-face conflict.



By Pamela Paul | Illustrations by Carl Godfrey

Jun 06, 2025 19:55 ET

How Can Counsel Help?



Identify high risk cases



Brainstorm with administrators on earlier, proactive measures



Outline legal risks from a Title IX and defamation standpoint during the disciplinary process



Remain open to discussion with attorney-advisors for both parties to address concerns

Thank you!



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