

The Intersection of Civil Rights and Torts

John and Jeanette Hall ("the Halls") sued Millersville University ("Millersville") under Title IX after their daughter, Karlie Hall, was murdered in her dorm room by her boyfriend, Gregorio Orrostieta. *Hall v. Millersville Univ.*, 2022 U.S. App. LEXIS 715 (3rd Cir. January 11, 2022) (Nygaard, Chief Judge).

In spite of finding genuine issues of material fact for each element of the Halls' Title IX claim, the District Court granted summary judgment in Millersville's favor, holding that Millersville lacked notice it could face liability under Title IX for the actions of a non-student guest. The question considered by the Circuit Court was whether Millersville had adequate notice it could be liable under Title IX for its deliberate indifference to known sexual harassment perpetrated by a non-student guest. The Court held that Millersville had appropriate notice.

Title IX's plain terms notify federal funding recipients that they may face monetary liability for intentional violations of the statute. Moreover, it is an intentional violation of Title IX's terms for a funding recipient to act with deliberate indifference to known sexual harassment where the recipient exercises substantial control over the context in which the harassment occurs and the harasser, even if they are a third party. Given this framework, the Court concluded that the text of Title IX provided Millersville and other federal funding recipients with adequate notice. The Circuit agreed with the District Court that genuine issues of material fact existed for each element of the Halls' Title IX claim. Therefore, it affirmed the District Court's order to the extent that it holds factual disputes preclude summary judgment in Millersville's favor.

The Court of Appeals concluded that the District Court erred in holding that Millersville lacked adequate notice of liability that it could be held monetarily liable under Title IX for its deliberate indifference to a nonstudent's conduct. The Supreme Court made clear in [Davis](#) that a funding recipient may be liable for acts of sexual harassment by individuals other than students. [526 U.S. at 643-46](#). Though [Davis](#) concerned only deliberate indifference to known student-on-student harassment, the Court's holding was not based upon the classification of the harasser as a student, guest, or other type of third party. See also [Simpson v. Univ. of Colorado Boulder](#), [500 F.3d 1170 \(10th Cir. 2007\)](#) (nonstudent football recruits). Instead, the Court's focus was on whether the funding recipient had control over the harasser and the context of the harassment since the funding recipient can only "subject" students to discrimination under Title IX if it has control over the harasser and remains deliberately indifferent to the harasser's actions. [Davis](#), [526 U.S. at 644-46](#).

The record demonstrated that Millersville knew, and intended, for its Title IX policies to apply to nonstudents. Millersville's 2014 Title IX policy, which was in place while Karlie was enrolled, defined sexual misconduct to include sexual assault and intimate partner/dating violence, and also required that incidents of sexual misconduct be reported to Millersville's Title IX Coordinator. More importantly, as admitted by Millersville's corporate designee, this policy "cover[ed] all areas of University operations, programs, sites, and include[d] the conduct of employees, students, visitors/third parties, and applicants." Millersville also believed that sexual misconduct as defined in its 2014 Title IX policy violated Title IX. Millersville's own Title IX policy thus

contemplated Title IX liability could result from the actions of third parties such as "visitors" like Orrostieta. Although the Court of Appeals did not rely on Millersville's 2014 Title IX policy for its holding or as an indicator of congressional notice, "we do find support for our reading of Title IX in the fact that [Millersville itself] rendered an analogous interpretation." [Davis, 526 U.S. at 647.](#)

The Court found additional support for its holding in the Office for Civil Rights guidance materials considered by the District Court. Throughout the Office for Civil Rights explains that sexual harassment by third parties could result in liability. See e.g., [Office for Civil Rights: Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, 62 Fed. Reg. 12034-01 \(Mar. 13, 1997\)](#)

To prevail on their Title IX claim, the Halls must show:

- 1) Millersville received federal funds;
- 2) sexual harassment occurred;
- 3) Millersville exercised substantial control over the harasser and the context in which the harassment occurred;
- 4) Millersville had actual knowledge of the harassment;
- 5) Millersville was deliberately indifferent to the harassment; and
- 6) the harassment was so severe, pervasive, and objectively offensive that it deprived Karlie Hall of her access to the educational opportunities or benefits provided by the school.

The record showed that the abuse and danger Karlie faced from Orrostieta were reported to several persons at Millersville who had some authority to take corrective action in this case.

The Court of Appeals was convinced that the Halls had satisfied their burden to defeat Millersville's motion for summary judgment, as there were genuine disputes of fact as to each element of the Halls' deliberate indifference claim. To reiterate, the Appellate Court affirmed the portion of the District Court's opinion which held that the existence of genuine disputes precluded summary judgment in Millersville's favor. But the Court also disagreed with the District Court's finding that Millersville lacked notice, and therefore the Court of Appeals reversed. The judgment of the District Court for the Eastern District of Pennsylvania was reversed, and the case remanded for further proceedings consistent with the opinion.

The bullet point take-away are as follows:

- Millersville University student murdered by her boyfriend.
- District Court granted summary judgment in Millersville's favor, holding that Millersville lacked notice that it could face liability under Title IX for the actions of a non-student guest.
- The Third Circuit reversed, finding that Millersville did have such notice as a funding recipient.

- The District Court was correct, however, to say that summary judgment would have been denied on the deliberate indifference claim.
- To prevail in the Title IX claim, the plaintiffs must show:
 - 1) receipt of federal funds;
 - 2) sexual harassment occurred;
 - 3) the college exercised substantial control over the harasser and the context in which the harassment occurred;
 - 4) college had actual knowledge of the harassment;
 - 5) college was deliberately indifferent to the harassment; and
 - 6) the harassment was so severe, pervasive, and objectively offensive that it deprived the student of her access to the educational opportunities or benefits provided by the school.
- The Court found that each of these were met, and therefore the case was remanded.

The Court of Appeals has given substantive life to Title IX, in order to protect college students.

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