

## When Is A School District “Deliberately Indifferent” To Student Discrimination Claims?

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When a student alleges discrimination within the school environment, the school district may be held liable if it was “deliberately indifferent” to the discrimination. Three recent cases involving allegations of sexual discrimination under Title IX and disability discrimination under Section 504, interpret the term “deliberate indifference.”

### CASE NAMES:

*Shadie v. Hazleton Area Sch. Dist.*, 2014 U.S. App. LEXIS 17507 (3d. Cir. Sept. 10, 2014)(Unpublished)

*Doe v. Charleroi Sch. Dist.*, 2014 U.S. Dist. LEXIS 149896 (W. D. Pa. Oct. 22, 2014)(Unpublished)

*Harden v. Rosie*, 99 A.3d 950 (Pa. Commw. 2014)

### KNOWLEDGE OF DISCRIMINATION

First, the school district must have actual notice, or knowledge of the discriminatory conduct alleged by the student. In the alternative, the school district must have knowledge of recent, similar acts against other students or knowledge of conduct which should alert the school District to a substantial risk of danger to students.

In *Harden* a student alleged sexual discrimination under Title IX relating to a sexual relationship between the student and her softball coach. The student proved at trial that several members of the softball team had complained to the school principal and superintendent of sexually crude and suggestive comments and conduct by the softball coach. There was also an unsubstantiated allegation of inappropriate touching by the softball coach, which occurred 10 years prior to the incident in question. There were no recent allegations of sexual conduct between the softball coach and students. The court held that the evidence of sexual comments by the coach was not enough to put the school district on notice of the danger that he might engage in a sexual relationship with a student. The Court explained:

While the conduct was completely inappropriate, crude, and unprofessional, the conduct itself was too different from that complained of by [the student] to have alerted the District to the fact that [the coach] posed a substantial danger of engaging a student in a sexual relationship. Specifically, no one reported that [the coach] was engaging in predatory behavior, there were no reports that he propositioned players, attempted to spend time with players outside of school hours or activities or meet them alone, texted or phoned individual players or otherwise sought to initiate or provoke a sexual relationship.

### DELIBERATE INDIFFERENCE

After proving the school district had sufficient notice or knowledge of the discriminatory conduct, the student must then prove that the school district was deliberately indifferent by failing to act based on that knowledge.

In *Shadie*, a special education student alleged discrimination based on disability after a teacher grabbed the student by the arm, yelled at him and shook him aggressively on two occasions within three days. The student did not require any medical or psychological treatment for the incidents. Both incidents were reported to the school district’s director of special education. School officials met with the student’s mother and his teachers the day after the first incident, and said they would investigate the allegations. After the second incident, the school district transferred the teacher to another

classroom and prohibited the teacher from having contact with the student. The Court in *Shadie* explained that there was no deliberate indifference in this case because the school district took steps to protect the student after the second incident. The student argued the school was deliberately indifferent for failing to act during the three days between the first and second incidents, but the court disagreed, explaining that the delay “rises at most to the level of ‘negligence or bureaucratic inaction,’ which is insufficient to establish deliberate indifference.”

On the other hand, when there is an “obvious need” to take action and the school district does not do so, the school district may be liable for discrimination claims by a student. In *Doe v. Charleroi*, a female student was allegedly raped by a teacher, who pled guilty to criminal charges. When the student returned to school after the incident, however, she was allegedly harassed by students and staff, including the school principal, who told the student she did not believe the student was raped. The principal allegedly prohibited the student from seeking help from teachers after being harassed by other students. The school also allegedly refused to clean a blood stain where the rape occurred, despite repeated requests by the student. The student was denied a hall pass, allegedly in retaliation for her accusations against the teacher. The student’s parents notified the district superintendent of the discrimination, but the incidents continued. The Court held the student had possible causes of action for discrimination under Title IX and Section 1983, because of the school district’s deliberate indifference to her claims.

#### **PRACTICAL ADVICE**

School districts should take all claims of discrimination seriously, and should promptly investigate claims and take appropriate action to protect its students from future discrimination.

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