RETALIATION AND SEXUAL HARASSMENT IN ACADEMIA

Presenter: Cari Simon, Esq.
Fierberg National Law Group
(303) 250-9631
csimon@tfnlgroup.com
Representing Survivors

- Campus Disciplinary Process
- Federal Investigations
- Accommodations
- Civil Lawsuits
- Defamation
Title IX Amendment to the Higher Education Act of 1972

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal assistance.
Retaliation


- Supreme Court held that "retaliation against a person because that person has complained of sex discrimination" is a form of gender-based discrimination actionable under Title IX.
Retaliation Legal Standard

*Emeldi v. University of Oregon* (9th Cir. 2012)

- **Prima Facie Case of Retaliation**
  1. engaged in protected activity (*i.e.*, complaint of sexual harassment)
  2. suffered an adverse action (*harm*)
  3. there was a causal link between the two

- **Burden Shifting**
  1. Once plaintiff has established a prima facie case for retaliation, defendant has burden to provide non-retaliatory reasons for adverse action it took against student.
  2. Plaintiff then has burden to establish that defendant’s reasons are pretext for the retaliatory action.
The Heavy Price of Coming Forward

“My School Punished Me”
A high school student accused a classmate of sexual assault. Her school suspended her.
By: Nana Caplan-Bricke

Grooming Perp and Peers

Policing Women
Retaliation is the grease that allows Sexual Harassment to thrive

- Prevents Reporting
- Unwelcome
- Sends a Message
- Exploits power imbalance
- Self-Perpetuates
- Interferes with the disciplinary process, and that is the POINT
- Victim Behavior and Appeasing Perpetrators
What we can do

- Public Outcomes
- Sanction and Discipline
- Presumption
- Move forward where there is a pattern of retaliation
- Alumni
- For faculty
- Accommodations and Remedies for victims and witnesses
Look at the Floor

Look at the Ceiling
Thank you

Q & A

Cari Simon, Esq.
Fierberg National Law Group
(303) 250-9631

csimon@tfnlgroup.com