

## LIABILITY EXPOSURES NOT PROTECTED UNDER GOVERNMENTAL IMMUNITIES

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There is a common misconception that Public Entities are fully protected from monetary damages in excess of the tort caps defined in their State's Tort Claims Act. The problem is, however, that there are certain claims to which these protections do not apply. For instance, under Title IX of the Education Amendments Act of 1972, the U. S. Supreme Court has ruled that students may seek monetary damages from schools that have been deliberately indifferent to risks of sexual assault or harassment.

### What is Title IX?

Title IX is a Federal Law that protects people from discrimination based on sex in all federally funded education programs and activities. Title IX states that:

***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 financial assistance.***

Key areas in which an educational institution has obligations under Title IX include: recruitment, admissions, and counseling; financial assistance; athletics; sex-based harassment; treatment of pregnant and parenting students; discipline; single-sex education; and employment.

### Title IX Claims

In a 2010 Florida case, the School Board of Highlands County was found liable under Title IX for the sexual abuse committed by the husband of the manager of the school's after-care program.

### Background

- Between 2009 and 2011 two female students, ages 7 and 10, were sexually abused while participating in the after-care program at Lake County Elementary School.
- The suit alleged that the after-care program manager, Maria Gonzalez, gave her husband, Orestes Gonzalez, unsupervised access to children during which he sexually abused the girls.
- Despite school board policy requiring all volunteers to undergo background checks, Mr. Gonzalez was never screened.
- In February 2011, Orestes Gonzalez was arrested after being accused of molesting the two girls, as well as an additional child. On December 12, 2011, Orestes Gonzalez pled guilty to five counts of lewd molestation and lewd conduct. In March 2013, he was sentenced to 13 years in prison.

### Plaintiff's Argument

- Plaintiff's counsel alleged that in 1994 the Assistant Vice-Principal at Lake County Elementary received actual notice that Orestes Gonzalez had molested a second-grade girl.
- The counsel argued that a school board is liable for the sexual abuse of its students under Title IX if a school official, with authority to institute corrective measures, fails to act after receiving notice that a person poses a substantial risk to the students.
- The Plaintiffs claimed that the principal and school board had acted with deliberate indifference by failing to take action and protect the students from Orestes Gonzalez .

### Result

- The jury found that the School Board was liable under both a Title IX claim and a negligence claim. Each girl was awarded \$1.5 million. Because the jury found liability under the federal claim of Title IX, the verdict was not subject to Florida's \$200,000 sovereign immunity cap.