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Education Alert

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Child Victims Act Plaintiffs precluded from filing lapsed federal abuse claims

By Tina Sciocchetti and Matthew Netti

The Second Circuit has ruled that New York's Child Victims Act does not revive or toll time-barred Title IX and Section 1983 Claims.

What's the Impact

- Five federal appellate courts, including the Second, Fifth, Seventh, and Tenth Circuits, have now held that specialized states statutes for sexual abuse claims do not revive otherwise untimely Section 1983 or Title IX claims.
- Plaintiffs suing educational institutions and personnel related to alleged historical sexual abuse under state revival statutes like the Child Victims Act face increasing difficulty in establishing federal court jurisdiction.
- The decisions do not impact a plaintiff's ability to attempt to revive time barred state claims related to alleged child sexual abuse, in state court.

The United States Court of Appeals for the Second Circuit (covering New York, Connecticut, and Vermont) held last week that New York's Child Victims Act (CVA) — which, in part, revived the time within which survivors of child sexual abuse could file state civil suits related to their abuse— did not revive or toll potential federal claims based on the same abusive conduct under Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.* (Title IX) or 42 U.S.C. § 1983 (Section

1983). In ruling that the CVA has no impact on the limitations period for Title IX and Section 1983 claims, the Second Circuit joined every other federal Circuit Court of Appeals that has addressed the issue to date, ruling that "a specialized statute for sexual abuse claims does not render an otherwise untimely Section 1983 or Title IX claim timely."[1]

The court consolidated for disposition the appeals in two different cases presenting the same claims revival issue. In one, the plaintiff sued his former school district, several former district employees, and one of his alleged abusers, for claims related to bullying and assaultive conduct against him during his freshman-year high school football season. The plaintiff alleged he was physically assaulted and sexually abused by older players, that coaches observed some of the incidents and failed to intervene, and that the head coach and school officials botched their responses to his complaints of abuse. The other plaintiff sued her former school district, her girls' basketball coach, and several administrators, asserting claims stemming from the coach's alleged sexual abuse of her while she was a minor student. Both plaintiffs sued in federal district court, asserting state claims that had been revived under the CVA, as well as federal claims under Title IX. The latter plaintiff included a Section 1983 claim. In both cases, the statute of limitations for the federal claims had long expired.[2]

The plaintiffs argued that Section 214-g of the CVA, which provides a one-time, look-back period during which plaintiffs may commence civil actions based upon certain conduct which would constitute sexual offenses committed against children less than 18 years of age, acted to revive their federal claims. Both district courts disagreed and held that even though the federal Title IX and Section 1983 claims were based on sexual abuse that fell within the contours of the Section 214-g, that law did not revive or toll the related federal claims. The district courts declined to exercise supplemental jurisdiction over the state law claims, effectively leaving state court as the plaintiffs' sole venue. The Second Circuit affirmed, holding that the tort-specific tolling provision found in the CVA is "not a revival or tolling statute closely related to the residual personal injury statute of limitations applicable to a Section 1983 or Title IX claim" and therefore did not affect the timeliness of the plaintiffs' Title IX and Section 1983 claims, which were time barred.

With increasing numbers of states passing legislation that revives, for specified time periods, untimely child sexual abuse claims, federal appellate courts are thus far uniform in holding that these statutes have no impact on lapsed Title IX and Section 1983 claims. These decisions make it increasingly difficult for plaintiffs to pursue federal court actions related to alleged historical

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[1] *See Varnell v. Dora Consol. Sch. Dist.*, 756 F.3d 1208, 1212–13 (10th Cir. 2014); *Bonneau v. Centennial Sch. Dist. No.* 28J, 666 F.3d 577, 580 (9th Cir. 2012); *King-White v. Humble Indep. Sch. Dist.*, 803 F.3d 754, 759–61 (5th Cir. 2015); *Woods v. Ill. Dep't of Child. and Fam. Servs.*, 710 F.3d 762, 765–68 (7th Cir. 2013). The Second Circuit noted that New York state courts interpreting the same statute of limitations provisions reached the same result, citing *Dolgas v. Wales*, 215 A.D.3d 51 (3d Dep't 2023) and *BL Doe 3 v. Female Acad. of the Sacred Heart*, 199 A.D.3d 1419 (4th Dep't 2021).

[2] Under well-settled law, claims filed in New York federal courts under Title IX and Section 1983 (both lacking a statute of limitations) are governed by New York's general statute of limitations for personal injury actions, which is three years under N.Y. C.P.L.R. § 214(5).

child sexual abuse against educational institutions and personnel. We will continue to monitor and report on CVA and Title IX developments impacting educational institutions.

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