**SUMMARY**

The United States Court of Appeals for the Sixth Circuit has affirmed a district court decision holding that the federal trial court must abstain from judicial review of an ongoing disciplinary proceeding against a student at the University of Kentucky ("UK"). As we previously reported, the District Court for the Eastern District of Kentucky found in *John Doe v. Hazard, et al.* that UK's disciplinary process for addressing alleged sexual assault was sufficiently akin to a state criminal proceeding to trigger the abstention doctrine articulated by the Supreme Court in *Younger v. Harris*, which precludes the involvement of the federal court in ongoing state proceedings.

Despite the applicability of *Younger* abstention, the Court of Appeals acknowledged that the plaintiff's lawsuit against UK could still be subject to federal judicial review if UK's proceeding against him was "flagrantly unconstitutional" or was made in bad faith. The court held, however, that even if the disciplinary process was unconstitutional in his *application*, the plaintiff would not have judicial recourse mid-proceeding unless the policy itself was *facially* unconstitutional. The Court of Appeals found that UK's policy did not reach this level. Because the plaintiff had also failed to demonstrate a pattern of bad faith prosecution or harassment, the Court of Appeals agreed that the district court's application of *Younger* was correct.

The limits of *Younger*: the same proceeding, but a different party – and a different result.

As is the case in many Title IX proceedings, both respondent and complainant filed suit in federal court against UK. The Honorable Joseph M. Hood heard both cases, and although he applied *Younger* abstention to the respondent's suit, he held that *Younger* abstention would not apply to the complainant's Title IX suit.

In his determination that the complainant's suit did not fit into the framework of *Younger* abstention, Judge Hood highlighted the last required element of *Younger*: that the plaintiff in the case before the federal court must be able to raise constitutional challenges in the course of the ongoing university disciplinary proceeding. The court noted that the constitutional rights afforded in a Title IX disciplinary action are afforded only to the respondent, not the complainant—and therefore the principles precluding the court from hearing the respondent's challenge to the ongoing Title IX proceedings would not apply to the complainant, who would be allowed to proceed with her suit.
Takeaways

• As we previously discussed [http://bit.ly/2ttarKM], while Younger abstention may prove beneficial for colleges and universities to protect the continuity of their internal disciplinary proceedings without mid-process judicial intervention, casting internal university disciplinary proceedings as “state” proceedings may open the door to more judicial review in the long term.

• Public colleges and universities should note that Younger will not preclude all challenges to an ongoing disciplinary proceeding—as articulated in the Sixth Circuit and district court decisions discussed above, the doctrine applies only in “exceptional circumstances” and when all three elements are present: (1) where there is an ongoing state judicial proceeding (in this case, a public institution’s disciplinary hearing); (2) involving an important state interest; (3) in which the federal plaintiff will have adequate opportunity to raise his constitutional claims.

For more information on these matters, please contact the authors or the attorney at the firm with whom you are regularly in contact.