

The Pathway to Compliance Series: Navigating Circuit Court Opinions

Red Light . . . Green Light . . . 1-2-3

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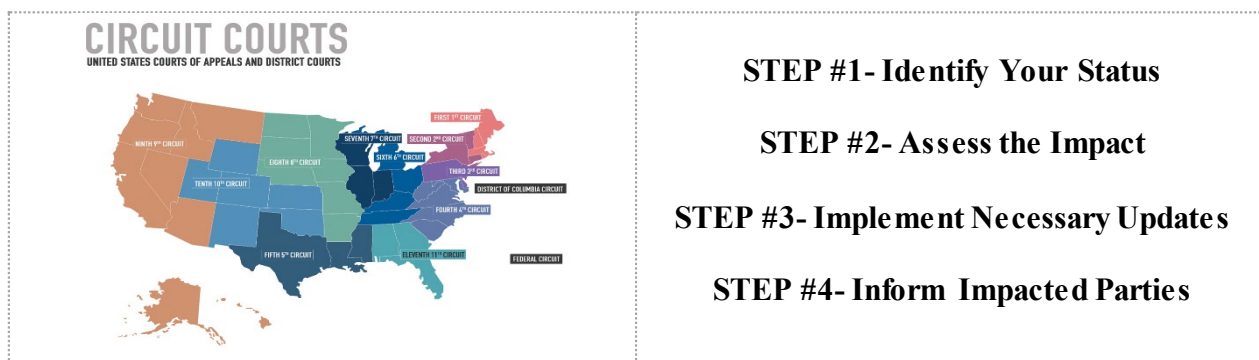
The Battle Between the Circuits

Earlier this year, there were two U.S. Circuit Court decisions published that addressed potential institutional Title IX liability related to sexual misconduct related incidents based on a deliberate indifference analysis. The first was a precedential decision released on January 11, 2022 by the **United States Court of Appeals for the Third (3rd) Circuit** regarding [*Hall v. Millersville University*](#) which held that colleges and universities may be held liable under Title IX for deliberate indifference to known sexual harassment committed by a nonstudent guest. The second surfaced later that month on January 25, 2022. The **United States Court of Appeals for the Ninth (9th) Circuit** issued a decision on [*Brown v. State of Arizona*](#) which affirmed that institutions must exercise substantial control over both the harasser and the context in which the alleged harm occurs. Absent both elements, institutional liability under Title IX is not warranted. In this case, an off-campus apartment was the location at issue. These are two cases that address the concepts of nonstudent involvement in sexual harassment related issues and the potential implications of incidents at non-campus and privately owned off-campus apartment complexes. One incident resulted in the death of a student.

So, the key challenge that many institutions face with limited time and resources is - What path do we take from here? Institutional leaders, practitioners, and related parties receive updates highlighting circuit court cases such as these through various channels, including publications, institutes, counsel, etc. Beyond skimming the facts of the case to confirm whether your institution or locality is involved . . . or reading a little more carefully to assess whether you are experiencing or have experienced the same fact pattern - what next? Should you stop to take a deeper dive or forward for a colleague to do so? Or should you take a mental note, accelerate through the content, and move on - never to look back unless necessary?

The Pathway to Compliance: Circuit Case Analysis Roadmap

When it comes to circuit court cases, there are four (4) critical steps that you should take to consistently propel your institutional processes and procedures toward short-term and long-term compliance.



STEP #1- IDENTIFY YOUR STATUS (Check the Map!)

Do you know whether either of these cases are binding to your region, your state, or most importantly your institution? Do you know your circuit number by heart or is it saved in your cellphone notes? The Student Conduct Institute (SCI) has designed a colorful resource to help you identify whether a Circuit Court decision applies to your state and institution, as well as the lower federal courts that fall within the circuit court's jurisdiction. U.S. circuit courts are divided into 13 circuits – each circuit having jurisdiction over several states and territories.¹ Each state represented may have one district at large, or may be divided into multiple districts, depending on the historical and current populations of the state.

For example, New York State has four districts (Eastern, Western, Northern, and Southern), while New Jersey only has one. If your state falls within the circuit court jurisdiction of a case- **stop** and **pay close attention** to the facts and the decision! The decision and its related requirements are binding to your institution. If your state falls outside of the jurisdiction- **slow down!** The decision may not be binding to your institution. However, there may be some invaluable insight and guidance to be gained.

STEP #2- ASSESS THE IMPACT (Binding Law or Invaluable Insight & Guidance)

Since U.S Supreme Court decisions are the highest legally binding source of the law where federal matters are concerned and U.S. Supreme Court justices take on only a limited number of cases, circuit decisions are not litigated at the U.S. Supreme Court level often. Consequently, most circuit decisions are binding to their respective states and are not easily overturned. **Institutions bound by these decisions** must ensure that their operations and practices directly align with the Court's opinion as related to institutional expectations. Different courts within the circuit may interpret and analyze the facts of the case in a slightly different way. However, they will look to the circuit decision as precedent. Key considerations include:

- What policies and/or procedures does the institution have in place that relate to the facts and circumstances of the case?
- Are there any policies and/or procedures that need to be updated and/or implemented to address the issues presented?
- If no updates are necessary, are impacted parties following the policies and/or procedures in place to ensure compliance and mitigate liability?

If your institution resides in a **state outside of the circuit court's jurisdiction**, the decision is **not binding** to your state. However, there are a few key things to consider:

- Your state may interpret the issues in a similar manner- Consult with counsel to confirm!
- Some courts look to other circuit decisions as society progresses and sometimes follow recent decisions establishing new precedents.
- Circuit decisions may highlight weaknesses in processes, procedures, and the implementation thereof, thus providing guidance for best practices to mitigate risk.
- Circuit cases put institutions on notice that certain issues are rising through the courts and have the attention of industry and the government. So, new federal laws, regulations, and/or enforcement initiatives may be on the horizon.

STEP #3- IMPLEMENT NECESSARY UPDATES (Focus on Policies, Procedures, Practices, Trainings & Resources)

¹ See chart on last page

Whether you determine that your institution needs a policy and procedural overhaul, minor update, or light refresh, take the time to ensure that all policies, procedures, their associated trainings and resource documents are also updated. These may include forms, reference guides, presentations, print and electronic communications and materials, etc. Furthermore, don't forget to update any hyperlinks that may connect to old information or may be broken during the update process. Remember that strong compliance is grounded in both procedural and substantive due process. Up to date policies, procedures and supporting documents that provide a clear roadmap to success are invaluable.

STEP #4- INFORM IMPACTED PARTIES (Put Key Team Members on Notice of Any Updates and/or the Importance of Following Existing Policy/Procedure)

Every strong compliance program has a team of individuals committed to equitable, effective, and consistent implementation with an eye on both procedural and substantive due process. (*See SCI's member exclusive training on Due Process*)

Once necessary updates, if any, have been identified, notify your team of policy/procedure/training professionals and other applicable employees/practitioners impacted by any of the changes. If no changes are necessary- Fantastic! However, still notify some of those individuals anyway and let them know that the issues presented in the case are important and may be on the radar of your diverse stakeholders - employees, parents, students, organizations, courts, etc. depending on the issue. Litigation often operates in trends once U.S. Supreme Court and circuit court case decisions are released, as seen with Name, Image, Likeness (NIL) litigation in response to the unanimous Supreme Court decision [National Collegiate Athletic Assn. V. Alston](#), which opened the door to new forms of compensation for student athletes beyond traditional institutional scholarships and resources. If you monitor and respond to decisions as they arise, and advise your teams accordingly, your institution and team will be able to anticipate and be more prepared for the steep inclines, obstacles, storms, or sudden legal and regulatory changes that will inevitably come your way.

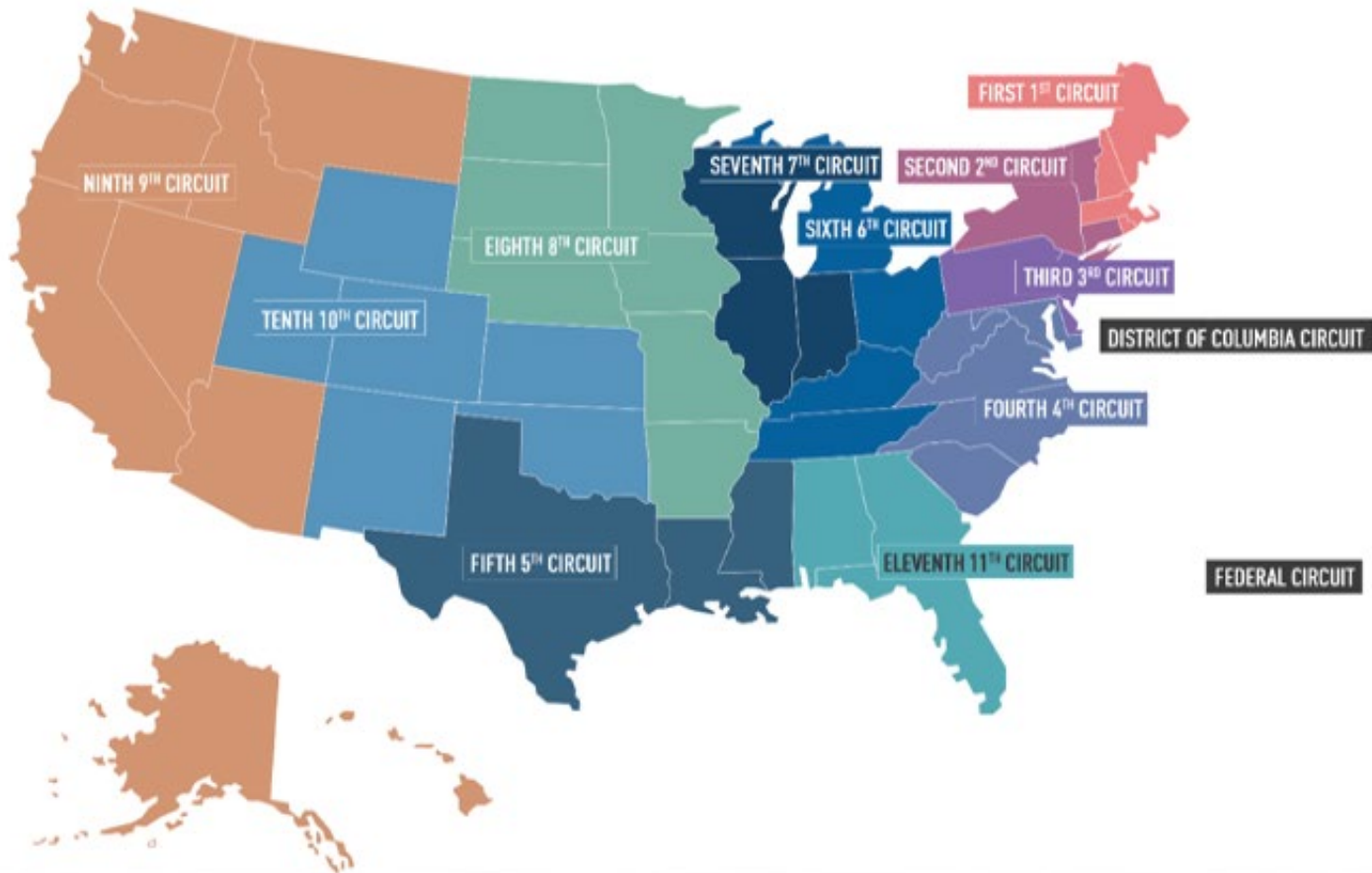
We, at SCI, are here to support your compliance journey through comprehensive training and resources, however far along you are on the path to success. Beginning with step one, let's "Identify Your Status!" using the SCI U.S. Circuit Courts resource below.

The Student Conduct Institute (SCI): Our Mission & Commitment to Accessible Education
The [State University of New York](#) (SUNY) [Student Conduct Institute \(SCI\)](#) has been committed to training staff at public and private institutions of higher education on how to fairly and equitably investigate and adjudicate conduct violations since its inception in 2018. As the tapestry of the federal and state laws, regulations, and court decisions with institutional impact become more complex, the road to compliance can feel more daunting. Even so, there are some fundamental educational tools, strategies, and resources academic institutions and their respective practitioners and associate professionals alike can integrate into their existing processes to identify and respond to "red" or "yellow" cautionary flags often shrouded in legal updates from diverse sources. And we, at SCI, are here to help on your journey toward ongoing compliance.

If you have any questions regarding this article, the Student Conduct Institute (SCI) resources or membership, or the Student University of New York (SUNY), please contact us at studentconductinstitute@suny.edu. We are happy to assist and look forward to connecting with you.

CIRCUIT COURTS

UNITED STATES COURTS OF APPEALS AND DISTRICT COURTS



Source: <https://www.uscourts.gov/about-federal-courts/federal-courts-public/court-website-links>

FIRST CIRCUIT

- Maine
- Massachusetts
- New Hampshire
- Puerto Rico
- Rhode Island

SECOND CIRCUIT

- Connecticut
- New York
 - Eastern District of New York
 - Northern District of New York
 - Southern District of New York
 - Western District of New York
- Vermont

THIRD CIRCUIT

- Delaware
- New Jersey
- Pennsylvania
 - Eastern District of Pennsylvania
 - Middle District of Pennsylvania
 - Western District of Pennsylvania
- Virgin Islands

FOURTH CIRCUIT

- Maryland
- North Carolina
 - Eastern District of North Carolina
 - Middle District of North Carolina
 - Western District of North Carolina
- South Carolina
- Virginia
 - Eastern District of Virginia
 - Western District of Virginia
- West Virginia
 - Northern District of West Virginia
 - Southern District of West Virginia

FIFTH CIRCUIT

- Louisiana
 - Eastern District of Louisiana
 - Middle District of Louisiana
 - Western District of Louisiana
- Mississippi
 - Northern District of Mississippi
 - Southern District of Mississippi
- Texas
 - Eastern District of Texas
 - Northern District of Texas
 - Southern District of Texas
 - Western District of Texas

SIXTH CIRCUIT

- Kentucky
 - Eastern District of Kentucky
 - Western District of Kentucky
- Michigan
 - Eastern District of Michigan
 - Western District of Michigan
- Ohio
 - Northern District of Ohio
 - Southern District of Ohio
- Tennessee
 - Eastern District of Tennessee
 - Middle District of Tennessee
 - Western District of Tennessee

SEVENTH CIRCUIT

- Illinois
 - Northern District of Illinois
 - Middle District of Illinois
 - Southern District of Illinois
- Indiana
 - Northern District of Indiana
 - Southern District of Indiana
- Wisconsin
 - Eastern District of Wisconsin
 - Western District of Wisconsin

EIGHTH CIRCUIT

- Arkansas
 - Eastern District of Arkansas
 - Western District of Arkansas
- Iowa
 - Northern District of Iowa
 - Southern District of Iowa
- Minnesota
- Missouri
 - Eastern District of Missouri
 - Western District of Missouri
- Nebraska
- North Dakota
- South Dakota

NINTH CIRCUIT

- Alaska
- Arizona
- California
 - Central District of California
 - Eastern District of California
 - Northern District of California
 - Southern District of California
- Guam
- Hawaii
- Idaho
- Montana
- Nevada
- Northern Mariana Islands
- Oregon
- Washington
 - Eastern District of Washington
 - Western District of Washington

TENTH CIRCUIT

- Colorado
- Kansas
- New Mexico
- Oklahoma
 - Eastern District of Oklahoma
 - Northern District of Oklahoma
 - Western District of Oklahoma
- Utah
- Wyoming

ELEVENTH CIRCUIT

- Alabama
 - Northern District of Alabama
 - Middle District of Alabama
 - Southern District of Alabama
- Florida
 - Northern District of Florida
 - Middle District of Florida
 - Southern District of Florida
- Georgia
 - Northern District of Georgia
 - Middle District of Georgia
 - Southern District of Georgia

FEDERAL CIRCUIT

- Court of Appeals for Veterans Claims
- Court of Federal Claims
- Court of International Trade
- Administrative Agencies

DISTRICT OF COLUMBIA CIRCUIT

- District of Columbia



Source: <https://www.uscourts.gov/about-federal-courts/federal-courts-public/court-website-links>