

07-1125 FITZGERALD V. BARNSTABLE SCHOOL COMM.

DECISION BELOW:504 F3d 165

LOWER COURT CASE NUMBER: 06-2596

QUESTIONS PRESENTED:

Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681(a), has been interpreted to provide an implied private right of action for sex discrimination by federally funded educational institutions. Section 1983 of Title 42 of the United States Code creates an express remedy for violations of the U.S. Constitution. Three courts of appeals have held that Title IX's implied remedy does not foreclose Section 1983 claims to enforce the Constitution's prohibition against invidious sex discrimination. In contrast, four circuits, including the First Circuit in this case, have held that Title IX's implied right of action is the exclusive remedy for sex discrimination by federally funded educational institutions. The question presented is:

Whether Title IX's implied right of action precludes Section 1983 constitutional claims to remedy sex discrimination by federally funded educational institutions.

CERT. GRANTED 6/9/2008