



CAMPUS COUNSEL

A legal blog written for administrators, HR professionals, in-house counsel, and deans at colleges and universities

Professor Terminated For Relationship With Admitted Student Allowed to Move Forward With Title IX Retaliation Claim

BY TIMOTHY H. POWELL • JANUARY 29, 2017

A former non-tenured professor at the University of North Texas has filed suit claiming that he was fired in retaliation for his participation, as the accused, in a campus investigation of a graduate student's sexual harassment complaint against him, in violation of Title IX and his due process rights. The U.S. District Court for the Eastern District of Texas on November 30, 2016 allowed the professor's claims to go forward, finding that Title IX's retaliation provision protects all individuals, even the accused, who participate in sexual harassment investigations.

The saga began in the spring of 2013 when the male professor met a twenty-six year old woman who, allegedly unbeknownst to the professor, had been admitted and planned to enroll that fall in a graduate program within the Department of Religion and Philosophy in which the professor taught. The two engaged in a series of allegedly consensual encounters initiated by the admitted student in the spring and early summer of 2013. In September, 2013, the professor was appointed the Director of Graduate Studies for the Department. The admitted student enrolled in the Department's graduate program that fall, and on February 7, 2014 filed a complaint with the University alleging sexual harassment by the professor during one particular encounter at his home on June 2, 2013. The University's Office of Equal Opportunity investigated the complaint and determined that (1) the professor had not violated the faculty consensual relationship policy because he had no authority over the student at that time, and (2) there was insufficient evidence to establish a violation of the University's sexual harassment policy; the student did not appeal this decision. Nevertheless, on July 3, 2014 the Department Chair notified the professor that his annual contract would not be renewed, based on a finding of "poor judgment" in his interactions with the student prior to her enrollment. The professor undertook several levels of internal appeals of the decision, but the decision not to renew was ultimately upheld by the Provost.

The professor now claims that he was terminated in retaliation for his participation in the sexual harassment investigation against him in violation of Title IX, among other claims. Title IX's retaliation provision states that no person "shall intimidate, threaten, coerce, or discriminate against any individual . . . because he has . . . testified, assisted, or participated in any manner in an investigation, proceeding, or hearing" related to a claim of sexual

harassment. As set forth in the statute, the court interpreted this language to have a “broad reach,” and accordingly ruled that participation “*in any manner*” in an investigation protects the subject of a sexual harassment claim from retaliation. The court reasoned that “[a]nything less would place too great a weight on false accusations by stripping the subject of the investigation of all protections from the very institution that is supposed to be an impartial tribunal.” The court concluded that the professor had alleged sufficient facts to support a claim that the University retaliated against him because he was the subject of a sexual harassment investigation. In other words, the professor could succeed on his Title IX claim at trial if he can prove the facts as alleged in his complaint.

Client Tip: As with the Second Circuit’s recent revival of a male student’s Title IX “reverse discrimination” suit against Columbia University for the repercussions on campus of a sexual assault complaint against him that was ultimately dismissed, the courts are signaling that the broad protections afforded by Title IX apply not only to victims of campus sexual harassment and assault, but to the accused as well, to the extent there are allegations of gender-based bias or retaliation in a university’s response to such complaints. Whether such claims could ultimately be successful remains to be seen, but institutions should at least be aware that these claims will likely survive the motion to dismiss stage.