



CAMPUS COUNSEL

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

Federal Court Recognizes Cause of Action Against University Under Title IX For “Student-on-Student” Retaliation

BY TIMOTHY H. POWELL • DECEMBER 20, 2017

A female former student at Iowa State University alleges that in January 2015, she was sexually assaulted at a fraternity by a male University student. The student brought a [Title IX claim against the University](#), claiming that the school was liable for the assault itself, as well as the inadequacy of both its response to the assault and subsequent peer retaliation against the student for reporting the assault.

The student alleged generally that the fraternity where the assault occurred had “rampant” drug and alcohol use and that the University was aware of an “epidemic of sexual assaults within the Greek Community.” The U.S. District Court for the Southern District of Iowa found these allegations too vague and general to support an inference that the University had knowledge of a heightened risk of sexual assault by her assailant that would be sufficient to impose liability on the University for the assault itself. The Court also found that the student had not alleged sufficient facts to show that the University itself had failed to act reasonably in its response to her report of sexual assault.

The student’s complaint was allowed to proceed, however, on her claim that the University failed to take action in response to student-on-student retaliation she faced for having reported the sexual assault. The student alleges that on a regular basis she was “publicly humiliated and shamed by other students for claiming she had been sexually assaulted” and was isolated from the Greek community. She allegedly reported this retaliation to the University’s Dean of Students and other campus offices, but nothing was done. She claims that her grades suffered as a result, and ultimately she dropped out of the school.

The court acknowledged that the Supreme Court has never recognized a private right of action for deliberate indifference to student-on-student retaliation. Nevertheless, the court reasoned that “[i]f a student-on-student sexual assault can . . . give rise to a Title IX private cause of action against an institutional recipient, there is no reason why student-on-student retaliation for reporting the assault should not be actionable under the same circumstances.”

***Client Tip:** Colleges and universities should be aware that liability for sexual assault under Title IX could extend to*

instances where institutions fail to take reasonable action in response to a student's report of peer retaliation in the wake of a sexual assault or harassment complaint. Institutions should consider implementing policies for reporting and responding to complaints of peer retaliation, and training campus staff on the proper actions to take when receiving a report of student-on-student retaliation.