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NY federal court allows a student to proceed with a negligence claim that she was owed a special duty in the investigation of her sexual misconduct complaint

By Tina Sciocchetti and Erin Huntington

Universities and their administrators face increasing theories of civil liability related to their handling of student sexual assault allegations. While there has been much focus in recent years on claims allowed under Title IX of the Education Amendments of 1972 (“Title IX”), litigants also typically pursue state law claims, which are often asserted in the context of an educational contract that exists between students and their schools. Of import then, is a [recent holding](#) by a federal district court in New York that a negligence law “duty” between a private college and its student may arise when the student reported an alleged sexual assault to the college’s Title IX office, and school officials led her to believe that an investigation and prompt action would occur. The court held that the facts, as alleged in the plaintiff’s complaint, created a plausible inference that the college owed the student a special duty and may have breached such duty by mishandling its investigation of the sexual misconduct complaint.

Background

The Court in the Southern District of New York accepted the following allegations from the plaintiff’s complaint as true for purposes of adjudicating the college’s motion to dismiss.

Believing that a classmate had drugged and sexually assaulted her, the student (plaintiff) went with a friend to the college’s Title IX Office and reported the assault to the Title IX coordinator and an investigator. The meeting proceeded in a hasty manner and was not formally documented. The student requested confidentiality, and declined a no contact order out of fear that she would experience retaliation from the accused student. She and her friend left the meeting with the belief that a formal complaint was made and that the college would investigate the sexual assault and take prompt action.

After the meeting, according to the complaint, the Title IX coordinator immediately informed the accused student of the allegations. As a result, the reporting student received harassing text messages and calls from the accused student, and rumors began to spread on campus that she was making false allegations. Further, she became extremely depressed and scared, and did not feel safe on campus. She isolated herself in her room and fell behind in her classes, while the accused

student transferred schools with the Title IX coordinator's assistance and without a notation being placed on his transcript.

The reporting student further alleged that as a result of the assault, she fell behind in classwork and missed classes, and was then threatened with suspension and told she had 48 hours to leave campus. She ultimately took a medical leave, but was pressured to hurry up and leave campus, making her depressed and despondent. As a result, she attempted suicide. Following hospitalization, the student's mother contacted the school to ascertain the status of the Title IX matter and was informed that her daughter never filed a formal Title IX complaint or sought any interim measures. The student then filed a formal complaint. The college conducted an investigation and disciplinary hearings in which the accused student was found not responsible. After pursuing an unsuccessful appeal, the reporting student sued the college and several of the officials involved in handling her sexual assault claim in federal district court.

Title IX claims

The suit included three separate federal claims for relief under Title IX, under the respective theories of "deliberate indifference," "hostile environment," and retaliation. The court first ruled the student plausibly alleged deliberate indifference under *Davis v. Monroe Cnty. Bd. Of Educ.*, 526 U.S. 629, 633 (1999), which requires that a college act "with deliberate indifference to known acts of harassment in its programs or activities," with a response to alleged harassment, that "is clearly unreasonable in light of the known circumstances." The court pointed to the allegations, again accepted as true, that the student received a hasty response when she initially made a report to the Title IX office, and did not receive a full explanation of her rights and options. For example, the court reasoned, the Title IX office did not tell the student she need not fear retaliation for getting a no contact order because the college's policy prohibited retaliation. Similarly, the staff did not explain to the student that her request to keep her report confidential might hinder the school's ability to investigate. According to the court, these alleged facts, along with the claim that the Title IX coordinator failed to keep the student's initial report confidential despite her request, supported "at least an inference that such conduct was clearly unreasonable in light of the circumstances."

At this motion to dismiss stage, the court was not persuaded by the college's argument that its extensive investigation and disciplinary process following the student's formal complaint demonstrated that the college was not deliberately indifferent. The court reasoned the student claimed she was not provided information about filing a formal complaint during her initial meeting with the Title IX office and, in fact, had left the meeting with the understanding that she had made a formal complaint and the college would investigate and take prompt action.

The court also found the student met her burden of pleading "a minimal plausible inference" of discriminatory intent on the basis of her sex in the college's handling of her Title IX claim, sufficient to support a "hostile environment" claim. The court noted such a claim requires sufficient proof of the student's subjective perception that the environment was hostile or abusive, as well as objective proof of the hostile and abusive environment, "that is, that it was permeated with discriminatory intimidation, ridicule, and insult sufficiently severe or pervasive to alter the conditions of [her] educational environment." Examining the totality of the circumstances, the court noted such a claim survived the motion to dismiss based on the student's allegations that she: received harassing text messages and calls from the accused student; was subjected to rumors that she was making false allegations; was accused by faculty of being lazy for missing classes; was rushed off campus after submitting her medical leave paperwork; and that as a result, began to fear ongoing retaliation, became depressed and scared, did not feel safe on campus, and ultimately

attempted suicide. The additional allegation by plaintiff that the college had a history of not adequately addressing female complaints of sexual harassment was enough to support a minimal plausible inference that she was discriminated on the basis of her sex.

Finally, the court held the student had alleged enough facts to plausibly infer that after she reported the sexual assault, she was subjected to adverse school-related action with a retaliatory motive. The court relied on the student's claims that she was placed on medical leave and pressured off campus four weeks after reporting her assault, and that the medical leave was offered only after she was informed that despite her reported sexual assault, she was too far behind in school and had no other option other than suspension. Therefore, the Title IX retaliation claims survived the motion to dismiss.

State law claims

Turning to the state claims, the court made a significant ruling with the potential for far-reaching impact. The complainant alleged breach of contract, negligence, and negligent infliction of emotional distress against the college and its officials. While a claim for breach of contract against a college as a result of its handling of student sexual assault claims is by now well-recognized—and indeed the court allowed the breach of contract claim here—courts typically have been reluctant to recognize negligence claims in connection with the investigation or adjudication of sexual misconduct complaints, theorizing that a school's legal duties in its processes are defined by the educational contract with its students and not negligence law. In doing so here, the court first observed that under New York law, a claim of negligence required “the existence of a duty, the breach of which may be considered the proximate cause of the damages suffered by the injured party.” *Becker v. Schwartz*, 46 N.Y.2d 401, 410 (1978).

In its brief to the court seeking to dismiss the claims in negligence, the college had argued that New York law held the existence of a contract forecloses negligence-based claims in the absence of a legal duty independent of the contract. *Dormitory Auth. of the State of NY v. Samson Constr. Co.*, 30 N.Y.3d 704, 711 (2018) (citing *Clark-Fitzpatrick, Inc. v. Long Is. R.R. Co.*, 70 N.Y.2d 382, 389-390 (1987)). Noting the plaintiff had not alleged a source of duty the college and its staff owed her outside the contractual obligations in the student handbook, the college contended that no “legal duty independent of the contract” existed. Rather, its obligation to investigate and adjudicate complaints of sexual misconduct were created and defined by federal and state law and by contract, not tort law. Here, the college reasoned, the absence of a special statutory duty (including under New York's campus sexual assault law, Article 129B) foreclosed any independent tort duty to its student.

The court disagreed. Citing a recent, analogous Title IX case decided by the Northern District of New York, the court stated “while generally ‘a college has no legal duty to protect students from being sexually assaulted by other students...a duty may be imposed upon a college when it has encouraged its students to participate in an activity and has taken affirmative steps to supervise and control the activity.’” Applying that standard, the court held the negligence claims survived a motion to dismiss because a special duty was created at the time of the student's initial report to the college's Title IX office:

Here, the [P]laintiff alleges sufficient facts to infer that once she reported the sexual assault and [the college] led her to believe that an investigation and prompt action would occur, the relationship between [the college] and Plaintiff was no longer identical to Defendants' relationship with all of its students. The Court finds there is at least a plausible inference

that Defendants owed Plaintiff a special duty, breached such duty by mishandling her investigation, and had knowledge of their employees' propensity for such conduct. (citations to complaint omitted).¹

The court similarly deemed sufficient to survive the motion to dismiss the student's negligent infliction of emotional distress claim, rejecting the college's argument that no special duty existed because it had the identical relationship with the complainant student as with all its students. The court disagreed and found "a plausible inference can be made that Defendants owed Plaintiff an independent duty and that such duty was breached." The court concluded that because the complaint alleged the reporting student became depressed, scared, and ultimately attempted suicide, it sufficiently alleged emotional distress as a result of such conduct.²

Takeaway

If, as the SDNY ruled in this case, a special relationship and duty may arise when a student reports a sexual assault to campus officials and is led to believe "an investigation and prompt action" will occur, it is not hard to imagine that such claims will be pled and may survive motions to dismiss in other jurisdictions. As always, it is therefore critical to carefully explain Title IX and campus policies to reporting students; ensure the parties understand the critical steps in the process to include the filing of a formal report; carefully document all communications with parties, including oral communications; and confirm the decisions made by students throughout the process.

For more information about the content of this alert, please contact your Nixon Peabody attorney or:

- Tina Sciocchetti at tsciocchetti@nixonpeabody.com or 518-427-2677
- Erin Huntington at ehuntington@nixonpeabody.com or 518-427-2748
- Michael J. Cooney at mcooney@nixonpeabody.com or 202-585-8188
- Steven Richard at srichard@nixonpeabody.com or 401-454-1020
- Eliza Davis at etdavis@nixonpeabody.com or 312-977-4150
- Kacey Houston Walker at kwalker@nixonpeabody.com or 617-345-1302

¹While the court relied on this "duty" analysis from the Northern District of New York—in [a case](#) which similarly addressed a motion to dismiss negligence and negligent infliction of emotional distress claims stemming from a college's handling of a student's sexual assault report—the court failed to mention that the district court actually dismissed the state negligence claims because it found no duty was owed to the student-plaintiff by the college and its personnel, and the plaintiff had failed to allege that her relationship with the university defendants went beyond that of a university and its student. Thus, among the federal district courts in New York State, there is a split on this issue.

²The court rejected a *cause of action* under the *respondeat superior* theory of liability for damages under Title IX for supervisory officials personally involved in the challenged conduct, holding there is no such claim for relief under New York's common law. However, the court reserved at this stage the potential applicability of the *doctrine of respondeat superior*.