

Half-Baked: Phillips Exeter, Sexual Assault, And A Recipe For Disaster

Education Law Notes

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Considered one of the country's most elite prep schools, Phillips Exeter Academy has recently joined the queue of prestigious private schools who have been accused of having ignored, suppressed, or minimized claims of sexual assault. A recent investigation by *The Boston Globe's* Spotlight Team focused particular attention on a case in which a female student at Phillips Exeter notified school officials that a male student had both fondled her backside and put his hand under her shirt despite her repeatedly telling him to stop. While other schools have faced allegations of more egregious and systemic misconduct, what makes this case of particular interest is Phillips Exeter's singularly ill-advised response to the incident.

The *Globe* reported that when the female student informed school officials of the incident, the school's response was to steer it away from police involvement and instead deal with it internally. To that end, the school's longtime chaplain convened a meeting between the two students to determine an appropriate consequence for the alleged assault. According to the victim, the male student had admitted his culpability in front of at least two faculty members. Nonetheless, rather than refer the alleged assailant for expulsion or at least a suspension, the school's chaplain instead directed him to bake a loaf of bread each week and to deliver it to the victim, a task which the male student apparently discontinued part way through the year.

Even when considered on its own, Phillips Exeter's approach was clearly wrongheaded. Nonetheless, the temptation to view it in the context of analogous situations is ultimately too difficult to resist. For example, were an individual found to have engaged in a violent home invasion, no tribunal would imagine it to be a good idea to have the malefactor return to the house each week, thereby forcing the victims to repeatedly relive the original trauma. Nonetheless, and despite the fact that the victim experienced panic attacks following the assault, the school thought it appropriate to compel the victim to face her assailant each week, about which she later told the *Globe*: "I was so ashamed of it. I was being reminded once a week that he assaulted me."

Almost impossibly, it got worse. When the victim sought reconsideration of the school's handling of the matter, its Dean of Residential Life reportedly determined that the incident had not constituted assault, but was instead "harassment" – which in many schools would be unacceptable in and of itself – and thus declined to take any disciplinary action. Additionally, the school's Dean of Multicultural Affairs allegedly chastised the victim for referring to the incident as "assault" and characterized the victim's feeling that she was no longer safe on campus as "irrational."

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Having failed to receive any constructive response from Phillips Exeter, the victim ultimately did what the school's own handbook would seemingly have required them to do at the outset, which is report the incident to the police, who charged the male student with misdemeanor sexual assault. Even then, the school appeared disinclined to reconsider its response. Ultimately, though, when hundreds of alumni signed an open letter, pledging to cease donations unless Phillips Exeter improved its handling of such cases, the school had an epiphany, finally acknowledging the error of its ways.

So What Is The Lesson?

As they do not receive any federal funds, many private schools are not susceptible to Title IX of the Education Amendments of 1972. Avoiding Title IX's proscriptions against gender-based discrimination, however, should obviously not be viewed as relieving educational institutions of *any* obligation to respond appropriately to claims of sexual assault, sexual harassment, or disparate treatment based upon gender. Moral imperatives aside, a number of states have their own anti-discrimination laws, which can under the appropriate circumstances be read to apply to private schools.

Furthermore, common law provides various tort theories which a student might seek to utilize in such cases, including negligent supervision or the negligent or intentional infliction of emotional distress. In addition, and as noted, Phillips Exeter reportedly had a student handbook which apparently included provisions on how reports of suspected sexual abuse were to be handled. Depending upon the circumstances, such handbook provisions could be claimed to form a contract, and a school's failure to comply with them could perhaps be deemed a breach of that contract. Thus, it is imperative that all schools, not just those covered under Title IX, create and, once established, *follow* a process for investigating and remediating claims of sexual assault or any form of harassment or bullying.

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