

The Ends Justify The Means: *Ha v. Northwestern University* and Responding to Sexual Harassment Under Title IX

Education Law Notes

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The recent decision in *Ha v. Northwestern University*, reiterates the leeway educational institutions have under Title IX when crafting a response to claims of sexual harassment. The plaintiff in *Ha* alleged that in February 2012, when she was a freshman, a professor, Peter Ludlow, sexually assaulted her at his off-campus apartment after he had “caused her to become intoxicated by plying her with drinks.” The plaintiff informed another professor of the incident, who alerted Joan Slavin, Northwestern’s Director of Sexual Harassment Prevention. Ms. Slavin immediately commenced an investigation, after which she concluded that Ludlow had subjected the plaintiff to inappropriate sexual advances after having gotten her too intoxicated to offer “meaningful consent.”

Based upon Ms. Slavin’s findings, Northwestern took remedial action against Ludlow, which included: denying him a raise for the following school year; rescinding his appointment to an endowed position; advising him to avoid one-on-one social contact with undergraduates; prohibiting him from both engaging in sexual relationships with students and supplying alcohol to underage students; directing that he have no contact with the plaintiff; and a warning that similar conduct could result in termination. Because Northwestern considered this a personnel matter, it only shared the no-contact directive with the plaintiff, and when she subsequently saw him on campus, she claimed that his continued presence triggered panic attacks. She additionally claimed that she had developed Post-Traumatic Stress Disorder as a result of the alleged assault and had been hospitalized following a suicide attempt.

In April 2012, the plaintiff’s attorney contacted Ludlow, demanding payment of the plaintiff’s damages. Ludlow responded by having *his* attorney send a letter, denying the sexual assault, accusing the plaintiff of lying, and threatening to sue her for defamation. The plaintiff contacted Ms. Slavin, and following a second investigation, Ms. Slavin concluded that Ludlow’s attorney’s letter did not violate Northwestern’s policies as it merely constituted a response to the plaintiff’s demand letter.

The plaintiff subsequently initiated a Title IX action against Northwestern, claiming that it had fostered a hostile environment, and had retaliated against her by, in part, denying her a fellowship. The federal court, however, granted Northwestern’s Motion for Judgment on the Pleadings, holding that the plaintiff had failed to establish deliberate indifference, which is a necessary element of liability under Title IX. To the contrary, the University promptly investigated the plaintiff’s complaint and took “timely, reasonable, and successful

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measures to end the harassment.” The fact that the school’s response was less than the plaintiff’s demand that Ludlow be discharged was irrelevant, for as the court observed, “Title IX does not give the victim the right to make particular remedial demands,” and, in any event, the harassment stopped following the University’s intervention. The court also rejected the plaintiff’s retaliation claims due to her failure to establish a causal connection between her complaints and the purported retaliatory acts.

So What is the Lesson?

Given that the University’s own investigation determined that Ludlow had gotten an underage student intoxicated and then, while she was “unable to offer meaningful consent,” made what the court termed “unwelcome and inappropriate sexual advances,” one might wonder exactly what *does* constitute a dischargeable offense at Northwestern? The University’s failure to terminate Ludlow would certainly seem to have been a predicate for the plaintiff’s Title IX claim.

Ultimately, though, the Ha court took a pragmatic approach, using the end result – no further harassment of the plaintiff by Ludlow – to justify Northwestern’s means. In reaching his decision, the judge relied upon the United States Supreme Court’s holding in *Davis v. Monroe* that a school would be deemed “deliberately indifferent . . . only where [its] response to the harassment or lack thereof is clearly unreasonable in light of the known circumstances.” In this case, Northwestern satisfied its legal obligation under Title IX, which is to take reasonable, concrete and effective steps when apprised of sexual harassment or other gender-based discrimination.

Of further note is the fact that the remedial actions implemented by Northwestern were not limited to Ludlow’s contact with the plaintiff, but also addressed his interactions with other students. This is critical, for although a school’s response may serve to prevent further issues between two particular individuals, it could prove advisable for the educational institution -- having been apprised of an employee’s or even another student’s alleged proclivities -- to fashion a response that serves to protect not only the complainant, but also other potential victims. To do otherwise could prove shortsighted, for what is reasonable within the context of a specific victim and an alleged perpetrator might be deemed “clearly unreasonable” when viewed in a broader framework.

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Tags: Sexual Harassment