

Title IX still applies to off-campus conduct that impacts students

By Kevin B. Scott, Esq.

We often advise clients who are understandably uncertain in the face of the litigation frenzy surrounding Title IX sexual harassment cases to abide by the Golden Rule of protecting a student's safety above all else. That doesn't mean you ignore other people's rights, but if it comes down to protecting a student you legitimately believe is in danger versus potentially violating someone's rights, you protect the student.

A case in point is *Yeasin v. University of Kansas*, No. 113,098, 9/25/2015. In this case, Navid Yeasin, a male student, was charged by police with criminal restraint, battery and criminal deprivation of property against another student, his ex-girlfriend, in an off-campus incident. A local court issued a final order of protection from abuse directing Yeasin to have no contact with the female student for one year.

The female student promptly filed a complaint with the university's office responsible for investigating claims of discrimination and harassment.

As a preliminary matter, based on its consideration of the restraining order, the university also issued a no-contact order that prohibited Yeasin from having any contact (physical, verbal, electronic or written) with the female student, and informed Yeasin that any violation could result in expulsion. Despite the no-contact order, Yeasin sent a series of demeaning tweets that the university believed violated the no-contact order. The tweets continued even after a warning by the university. The university believed Yeasin's behavior was escalating.

The university completed its investigation of the female student's complaint and found that Yeasin had violated the university's sexual harassment policy, citing both the off-campus incident and the tweets that continued despite the no-contact order and the university's warning to stop.

Review how courts viewed off-campus conduct

Yeasin was expelled and sued the university in federal court, claiming his behavior took place off campus and the university's right to discipline was limited to on-campus behavior.

The district court sided with Yeasin, finding no evidence of on-campus misconduct and holding that the university's sexual harassment policy was limited to on-campus incidents and university-sponsored events.

The circuit court agreed, holding that the university had no right to discipline Yeasin because its student conduct code was, by its terms, limited to on-campus activities and university-sponsored events. According to the circuit court, the fact that advisory opinions under Title IX make it clear that Title IX can apply to off-campus

behavior doesn't control if the university's student conduct code only applies to on-campus behavior.

The circuit court likewise took a very limited view of whether the university's action was justified based on Yeasin's violation of the university's no-contact order, stating there was no evidence that Yeasin posted the tweets "while he was on campus." The circuit court affirmed the decision of the district court, which ordered that Yeasin be readmitted and reimbursed for any lost tuition.

Consider what this case does *not* mean

Contrary to some reports, this case doesn't mean that Title IX doesn't apply to off-campus behavior. The circuit court specifically stated it didn't need to address that issue since the university didn't have the necessary power in its student conduct code, according to the circuit court, to discipline such behavior in the first place. The circuit court also didn't have to determine whether Yeasin's tweets were protected by the First Amendment because they took place off campus and, accordingly, weren't actionable.

Heed practical lessons from case

Colleges and universities should ensure their sexual misconduct policies cover off-campus behavior at least to the extent such behavior adversely impacts students on campus. Policies should also clearly state that malicious use of social media will be actionable if it affects students on campus, regardless of whether the social media was used on or off campus.

Perhaps the most important lesson from this case relates to the decision-making process. If you approach these types of situations with the goal of avoiding or prevailing in litigation, and something tragic occurs, you could find yourself subject to the worst type of second-guessing.

Instead, consider following the example of the University of Kansas. The university relied on the judgment and experience of its administration to deal promptly and effectively with a perceived threat to one of its students by removing another student whose conduct, even according to the appeals court, was reprehensible, demeaning and criminal. If they had to do it all over again, knowing what they know, I would hope they would do the exact same thing. ■

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