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UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JUL 2 2 27 PM '77
U.S. DISTRICT COURT
NEW HAVEN, CONN.

PAMELA PRICE

v.

YALE UNIVERSITY

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CIVIL NO. N-77-277

MEMORANDUM OF DECISION

This action was originally brought on July 6, 1977, by a male faculty member and several women students and former students at Yale University seeking redress for purported sex discrimination at the university and contending that Yale's alleged "failure to combat sexual harassment of female students and its refusal to institute mechanisms and procedures to address complaints and make investigations of such harassment interferes with the educational process and denies equal opportunity in

education." Complaint, paragraph 1.

The plaintiffs asserted a right to relief individually and on behalf of a proposed class under Title IX of the Education Amendments of 1972, 20 U.S.C. §1681 et seq.,^{1/} and requested, inter alia, various corrective measures to be designed and implemented under the supervision of this court. Jurisdiction of the court was invoked pursuant to 20 U.S.C. §1681 and 28 U.S.C. §§ 1343, 2201 and 1331.

A motion to amend the complaint in which the plaintiff, Pamela Price, was added as a party was filed on November 16, 1977, and granted on December 7, 1977. A ruling of Magistrate Arthur H. Latimer of December 21, 1977, endorsed by Judge Jon O. Newman on November 28, 1978, 459 F. Supp. 1, granted the defendant's motion to dismiss as to all plaintiffs except Miss Price holding that a right of action on behalf of Miss Price might be implied

if administrative remedies provided by the Department of Health, Education and Welfare proved to be inadequate and, in a subsequent ruling filed December 6, 1978, this court found such to be the case.^{2/}

In her complaint plaintiff Price alleged that, in June, 1976, when she went to the office of Raymond Duvall, the professor who taught her course in International Relations, Political Science 39b, at the defendant university, Professor Duvall "offered to give her a grade of 'A' in the course in exchange for her compliance with his sexual demands." She further alleged that, shortly after the incident, she complained orally and in writing to responsible university officials, and was told nothing could be done about her situation, that no investigation was made or disciplinary action taken against Professor Duvall and that she later received a grade of "C" in the course which "was not the result of a fair evaluation of her academic work, but the result of her refusal to accede to Professor Duvall's sexual demand." Miss Price alleged further that, "[a]s the direct result of her explicit rejection of said sexual proposition, [she] suffered educational detriment. She has suffered distress, humiliation, has received a grade on her transcript that does not reflect the quality of her academic performance, and has been injured, and is continuously being injured, in her educational advancement and in the future pursuit of her career." Plaintiff also alleged that in September, 1977, officers of the defendant requested she resubmit her complaint but that, after her resubmission, no investigation of the incident was made nor was her grade changed and that her experience is the result of a pattern,

practice and policy of defendant of neglecting and refusing to process and consider seriously complaints of sexual harassment of women students, with the effect of actively condoning continued sexual harassment of female students by male faculty members and administrators.

The court, during the seven trial days of this case, had the benefit of the testimony, among others, of Miss Price and Professor Duvall, as well as that of officials of Yale University and those academicians who reviewed Miss Price's paper at the request of the University and of the plaintiff. On the basis of all the evidence the court finds that the alleged incident of sexual proposition did not occur and that the grade of "C" which Miss Price received on the paper submitted to Professor Duvall and the grade of "C" which she received in his course did not reflect consideration of any factor other than academic achievement.^{3/} The court does not find -

nor could it - the appropriate grade for Miss Price's paper, clearly an academic and subjective judgment beyond its competence. The court finds only that Miss Price did not prove that the refusal of a sexual advance was a consideration in the determination of that grade by Professor Duvall.

FACTS

Plaintiff Pamela Price, currently a law student at the University of California at Berkeley, was graduated from Yale University in May, 1978, as a political science major, having commenced her studies at that university in September, 1974. In the spring term in 1976 she was enrolled in a course denominated Political Science 39B taught by Professor Raymond Duvall. This course was concerned with the international relations of under-developed countries and focused on the general topics of international constraints on the development of

those countries. The course met twice weekly in a lecture session and was broken down into two discussion sections which met weekly, each under the direction of a teaching assistant. In Miss Price's section the teaching assistant was James Austin. The final grade in Political Science 39B was derived from two elements, a final examination which constituted forty per cent of the grade and an original research paper which would count for sixty per cent of the grade. Miss Price received a "C-" on her final examination in the course and made no claim in this law suit with respect to the propriety of that grade.

During the spring term Miss Price who, in addition to her studies at the university, worked for the Afro-American Cultural Center at Yale and taught a psychology course at Lee High School in New Haven, found it necessary to request extensions for the submission of papers due in Political Science 39B and in History 73B and Political Science 27B. On April 29, 1976, she was granted an extension in Political Science 39B until May 31, the paper originally being due on April 30, the date of her final examination in the course.

On April 30, James Austin was one of two teaching assistants serving as proctors for the examination in Political Science 39B. Toward the end of the examination period Miss Price, in an agitated state, told him she had lost a spiral notebook which she had in the examination room with her and which, she claimed, contained her paper on which she had only a few more hours of work to do, her rough draft and her notes. At some unspecified later date her notebook was returned to her.

Subsequently, on the evening of June 6, 1976, Miss Price, in the company of a fellow student, visited

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the apartment of Eva Balogh, Dean of Yale's Morse College, of which college Miss Price was a member. At that time Brenda Jubin, former Dean of the college, was visiting Dean Balogh. In the presence of her companion and Miss Jubin, Miss Price related that, on that day, she had gone to Professor Duvall's office to turn in her research paper and that Duvall sexually propositioned her and said that, if she did not oblige, she might end up with a grade of "C" in the course. Miss Price claimed she had refused to comply and asked what could be done about the situation. Dean Balogh advised Miss Price, because of the complexity of such a situation which occurs in private, to wait until she received her course grade since, if it were a "C", it would give her more credence.

Miss Price agreed that this was the best course of action. She asked Dean Balogh to keep the matter confidential and expressed her opinion that the paper was at least of "B" caliber and that she expected an "A" in the course. As plaintiff planned to leave shortly for her junior year studies in Tanzania, Dean Balogh asked her to write and agreed to "keep an eye on the grade." Within twenty-four hours Miss Price left New Haven.

The next morning Dean Balogh reported the episode to Martin Griffin, Associate Dean of Yale College and Dean of Undergraduate Studies. She told the Dean that she had suggested Miss Price wait until her grade came in and Dean Griffin agreed it was appropriate to wait for the grade and for further word from Miss Price.

Within the week Dean Balogh learned that Miss Price had received a grade of "C" in Political Science 39B. She telephoned Dean Griffin and reported to him the grade

and her belief that Miss Price was in Tanzania. He replied he did not think anything could be done until they heard from Miss Price.

On June 23, 1976, Miss Price returned to New Haven and recounted to Eric Lum, director of the Afro-American Cultural Center, the same allegations as to Professor Duvall's conduct. Mr. Lum advised her to type up a statement about the incident which she did, leaving it with him. She did not contact Dean Balogh or make any effort to determine her course grade from anyone at Yale, and she left New Haven for New York, her departure point for Tanzania.

Professor Duvall left New Haven at the end of June to accept a position at the University of Minnesota where he is presently a tenured member of the faculty.

In late July or early August Miss Price learned of her grade in a letter from her mother. She did not,

however, write to anyone at Yale University about it although she wrote to Dean Balogh, Eric Lum and Harnesba Hill, Dean of Student Affairs at Yale, during her absence, without commenting in any of that correspondence on her grade or any action she wished taken with respect thereto.

Miss Price returned to New Haven in May, 1977, and although she saw and spoke with Dean Balogh several times during the spring and summer, she did not mention the incident.

Prompted by the filing of the instant law suit, in August, 1977, Dean Griffin asked Dean Balogh, as he asked all the residential college deans, to let him know anything the university should have knowledge of in the context of the law suit. Dean Balogh reminded him of Miss Price's charge and he requested Dean Balogh to submit a written statement. Dean Balogh submitted such a statement on August 30 and, after receiving it and

consulting with Horace Taft, Dean of Yale College, Dean Griffin requested Dean Balogh to ask Miss Price if she wished to make a formal complaint. Miss Price submitted a complaint on September 23, 1977, which Dean Balogh transmitted to Dean Griffin with a covering letter on September 27.

Dean Griffin and Dean Taft discussed the best method of addressing Miss Price's complaint and, because Professor Duvall was no longer at Yale, determined to proceed as if Miss Price's allegations of impropriety had been substantiated and determine whether her course grade was proper. They then submitted Miss Price's research paper, her written complaint and a letter from Eric Lum which enclosed Miss Price's statement of June 23, 1976, to Joseph LaPalombara, chairman of the political science department, with the request that the paper be read by one or two persons in the department.

Professor LaPalombara read the paper and determined that it was a mediocre paper, essentially worth a "C" grade. He then gave the paper to Professor William Foltz, an African specialist in the political science department, for his evaluation, Miss Price's paper having been written about Tanzania. Professor Foltz was not told the name of the student, or why an evaluation was sought. Professor Foltz, having read the paper, determined it should be graded "C" or "B", "C" if it was supposed to be original research, "B" if it was supposed to be a think piece where the student was not expected to have detailed knowledge about a particular country.

When Professor LaPalombara reported to Dean Griffin that the paper deserved either a "B" or a "C", depending

on what was expected of the student. Dean Taft advised him that this was not a response to the request since a clear recommendation of a grade was required. He also asked Dean Griffin to contact Dean Balogh and ask her to determine from Miss Price more specifics on the kind of paper this was. Dean Balogh reported back that the paper was supposed to be a research paper and that James Austin was the teaching assistant in the course. This information in turn was given to Professor LaPalombara who secured a copy of the syllabus course and asked Mr. Austin also to read the paper. Although Mr. Austin knew the identity of the student, he believed the paper had recently been submitted by the plaintiff in order to obtain course credit and was unaware of the circumstances prompting the departmental review or that any other person was reading the paper. Mr. Austin assigned a grade of "C" to the paper. ^{4/}

Thereafter on November 15, 1977, Deans Griffin, Taft and Balogh met with Miss Price in Dean Taft's office to inform her of the result of the university investigation. Dean Taft stated that if Professor Duvall were still at the university, it would have conducted an inquiry under procedures established by the American Association of University Professors for investigation of serious complaints against faculty members, but that, in his absence, they proceeded as if that investigation had taken place and her charge had been substantiated. Dean Taft then indicated the evaluation of Miss Price's paper by three readers indicated it should be graded no greater than "C" and, since it accounted for sixty per cent of her course grade, there was no basis for changing her final grade. 77

CONCLUSIONS OF LAW

The court is unaware of any case in which an allegation of sexual harassment in an educational context has been addressed. It has consistently been plaintiff's contention that the failure of Yale University to have adopted regulations to set forth procedures to be followed in cases of alleged sex discrimination is in itself a violation of law, specifically that portion of the regulations of the Department of Health, Education and Welfare, 45 C.F.R. §86.8(b), which requires that "[a] recipient [of federal financial assistance^{5/}] shall adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited by this part."

In June, 1976, when Miss Price first spoke to

Dean Balogh, Yale University had no such regulations setting forth any procedures to provide for resolution of such complaints. In the spring and summer of 1977, Regulation XI of the Undergraduate Regulations provided that "[i]f a student in Yale College believes that someone acting for the University has behaved towards the student in a way that is improperly based upon considerations of . . . sex . . . , the student should normally first discuss the problem with the person complained of, but may also seek advice on how to secure an equitable solution of the problem from the Masters and Deans of the Residential Colleges, the Chairman of the Yale College Executive Committee, or the Associate Dean for Student Affairs. If the problem cannot be resolved by informal discussion, the person or persons to whom it is referred shall assure that the complaint is reviewed by the appropriate authorities and/or established procedures. An instructor's evaluation of

the quality of a student's work in a course is final, and this statement shall not be construed as applying to a dispute about a grade assigned to a student by a member of the faculty."

This court is in agreement that the procedures set forth above give no real guidance to students or to faculty as to procedure to be followed with respect to claims such as Miss Price had made. The suggestion that one first approach the offending faculty member seems particularly inappropriate in such a case. It also appears that Yale's actual response in this case was entirely ad hoc but, given the unique factual situation in this case where the plaintiff left the university shortly after first indicating her complaint and did not return until some eleven months later, having expressed no interest or concern to university officials in the

interim, Yale's handling of her complaint was neither arbitrary nor unreasonable. The question arises, however, whether, given the factual findings made by this court in this case, the inadequacy of procedures to respond to claims of sexual discrimination should be addressed by the court.

An analogy may be drawn to cases alleging sexual discrimination in employment. In those cases a plaintiff must establish that the acts complained of constitute a condition of employment and that this condition was imposed by the employer on the basis of sex. Tomkins v. Public Service Electric & Gas Co., 568 F.2d 1044 (3d Cir. 1977). If plaintiff had proved that a demand for sexual compliance was made of her because of her sex and that her course grade was conditioned on that compliance, the analogy would be apt. But it does not follow that, if Yale University failed to articulate appropriate procedures to deal with such a claim, a

plaintiff who can show neither an improper advance nor the injury she claimed has a grievance to be redressed by this court. She must show not only the wrongful conduct claimed but that she is suffering adverse effects as a consequence of that conduct. O'Shea v. Littleton, 414 U.S. 488, 495-96 (1974). Miss Price, no longer a student at Yale University, is herself unaffected by the existence or nonexistence of such university regulations, even if that existence or nonexistence has an adverse impact on present female students. In her complaint she claimed that she "is continuously being injured, in her educational advancement and in further pursuit of her career." Such a claim can only relate to her allegation of an improper grade on her transcript, an allegation she has failed to prove.

Accordingly, judgment may enter for the defendant.

SO ORDERED


ELLEN BREE BURNS
UNITED STATES DISTRICT JUDGE

Dated at New Haven, Connecticut, this 2nd day of
July, 1979.

1/ 20 U.S.C. §1681 provides in pertinent part:

"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance . . ."

2/ In Cannon v. University of Chicago, ___ U.S. ___,

47 U.S.L.W. 4549, decided May 14, 1979, the Supreme Court found Title IX of the Education Amendments of 1972 implicitly creates a private right of action for sex discrimination in education.

3/

This court does not accept the proposition pressed by defendant that the correctness of the grade received in a case where sexual harassment is proved would itself be dispositive of a claim of discrimination. If a plaintiff shows a term or condition has been imposed in a sexually discriminatory fashion she will have stated a claim. Cf. Tomkins v. Public Service Electric & Gas Co., 568 F.2d 1044 (3d Cir. 1977), sex discrimination in employment. Proof that the grade is correct in such a case would not mean the student had not suffered educational detriment. Her performance might be adversely affected by emotional trauma or she might forego other courses taught by the offending instructor despite their importance to her educational plans.

4/ Miss Price's expert witness, who was a former student of, and teaching assistant to, Professor Duvall for whom he had graded examination papers, testified he would assign a grade of "B" to plaintiff's paper but that, if he applied the standards and requirements which Professor Duvall would apply, he would probably assign it a grade of "C".

5/ Defendant points out in its brief that plaintiff failed to offer evidence of Yale's receipt of federal financial assistance. Since, in the protracted and vigorously contested pretrial motions and hearings in this case, defendant never raised the issue that it is not subject to Title IX, it could well be found to have waived requirement of such proof.