

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

KATHRYN KELLY,
Plaintiff,

v.

YALE UNIVERSITY,
Defendant.

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CIVIL ACTION NO.
3:01-CV-1591 (JCH)

MARCH 26, 2003

**RULING ON DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT [DKT. NO. 14]**

The plaintiff, Kathryn Kelly ("Kelly"), brings this action against Yale University ("Yale"), asserting claims under Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 and Connecticut common law. Kelly alleges that the defendant, by inadequately responding to her complaints regarding an incident of alleged sexual assault by another student, violated Title IX. Kelly also alleges that Yale's response renders it liable to her under Connecticut state law, on theories of defamation, negligence, breach of contract, and intentional infliction of emotional distress.

Yale seeks summary judgment on all claims asserted. More specifically, Yale asserts that its response to Kelly's complaint was reasonable; it did not defame Kelly; it owed no duty to Kelly that was breached; there was no contract between Kelly and Yale to support her breach of contract claim; and it did not intentionally inflict emotional distress on her.

Based on the reasons set forth below, defendant's motion for summary judgment is granted in part and denied in part.

I. FACTUAL BACKGROUND

At all times relevant to this action, Kelly was a student at the Yale Divinity School. On October 18, 1999, Kelly was sexually assaulted by Robert Nolan ("Nolan"), a fellow student on the Yale University campus. On October 25, 1999, Kelly filed a formal written complaint with the Yale Divinity School Sexual Harassment Committee. In that complaint, Kelly stated that the assault and its aftermath had created a hostile environment for her, and she requested that the Committee take immediate remedial action against Nolan. Specifically, Kelly asked that Nolan be removed from a class in which both she and Nolan were enrolled. Upon receipt of Kelly's complaint, the Sexual Harassment Committee ("Committee") commenced proceedings in accordance with its written Grievance Procedures.

Pursuant to those grievance procedures, the Committee researches the complaint and decides if a hearing is necessary. If a hearing is conducted, the Committee notifies the complainant and the accused in writing. Following the hearing, the Committee prepares a written report, which includes a recommended response for Dean of the Yale Divinity School. The Dean then determines what action with respect to the accused is appropriate. According to the written procedures, this process should be completed within two months.

Grievance Procedures, Exh. B to Def's Memo. of Law in Supp. of Mot. for Summ. J. [Dkt. No. 16].

In response to Kelly's complaint, the Sexual Harassment Committee researched the incident, held a hearing, and submitted a report to the Dean on December 2, 1999. The committee's report concluded that Nolan had committed a sexual violation and recommended that Nolan be required to take a leave of absence until the 2002-2003 academic year, after Kelly's expected graduation. The Dean adopted the report's findings, and Nolan left the Yale Divinity School at the end of the fall semester, 1999.

The administration also held two open forums on campus to address student concern arising out of the incident between Kelly and Nolan on November 19, 1999 and March 17, 2000. At the March forum, Dean Wood stated that Nolan's assault on the plaintiff "was not legal rape."

Throughout the grievance process, Kelly claims that she made repeated requests for academic accommodations. Kelly asked several professors and administrators for a compromise solution that would allow her to continue her studies. Kelly also requested that Yale provide some academic planning assistance to her. According to Kelly, Yale never responded to her repeated entreaties.

Kelly also claims that she repeatedly requested alternative housing during the pendency of the grievance procedures. At the time of the assault, Kelly and Nolan lived in

the same dormitory. Because she no longer felt safe living there, Kelly requested that the university provide her with alternative housing. Several weeks after Kelly filed her complaint, Yale provided Kelly with a room in the guest quarters at the Divinity School. However, Kelly alleges that she obtained this alternative housing only after a professor, Margaret Farley, intervened on her behalf.

With the exception of one phone call she received from Nolan on October 19, 1999, Kelly never had any contact with Nolan following the October 18, 1999 incident, nor does she claim she was harassed by him after that date. Kelly eventually withdrew from all of the classes in which she was enrolled during the Fall 1999 semester. As a result, she completed her course work at the Divinity School one semester later than expected, in December of 2000.

II. DISCUSSION

A. Standard

In a motion for summary judgment, the burden is on the moving party to establish that there are no genuine issues of material fact in dispute and that it is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256 (1986); Marvel Characters, Inc. v. Simon, 310 F.3d 280, 286 (2d Cir. 2002). The burden of showing that no genuine factual dispute exists rests upon the moving party. Marvel Characters Inc., 310 F.3d at 286. Once the moving party has met its burden, in

order to defeat the motion the nonmoving party must “set forth specific facts showing that there is a genuine issue for trial,” Anderson, 477 U.S. at 256, and present such evidence that would allow a jury to find in his favor. Graham v. Long Island R.R., 230 F.3d 34, 38 (2d Cir. 2000).

In assessing the record, the trial court must resolve all ambiguities and draw all inferences in favor of the party against whom summary judgment is sought. Anderson, 477 U.S. at 255; Lucente v. International Business Machines Corp., 310 F.3d 243, 253 (2d Cir. 2002). “Summary judgment is improper if there is any evidence in the record that could reasonably support a jury’s verdict for the moving party.” Lucente, 310 F.3d at 254. When reasonable persons, applying the proper legal standards, could differ in their responses to the questions raised on the basis of the evidence presented, the question is best left to the jury. Sologub v. City of New York, 202 F.3d 175, 178 (2d Cir. 2000).

“The mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact.” Anderson, 477 U.S. at 247-48 (emphasis in original). The substantive law of the claim governs materiality, as “[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.” Id. at 248.

B. Title IX

Kelly brings a hostile-environment claim against Yale, alleging that its deliberate indifference to Nolan's harassment of her violated Title IX's prohibitions on gender discrimination.¹ Title IX provides that “[n]o 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.” 20 U.S.C. § 1681(a).

A recipient of federal funding can, under certain circumstances, be liable under Title IX for discrimination arising out of student-on-student harassment. Davis v. Monroe County Bd. of Educ., 526 U.S. 629, 644-45 (1999). In order to establish a claim based on student-on-student harassment under Title IX, a plaintiff must demonstrate that: (1) the alleged harassment was so “severe, pervasive, and objectively offensive” that it deprived the plaintiff of “access to the educational opportunities or benefits provided by the school”; (2) the funding recipient had “actual knowledge” of the sexual harassment; and (3) the funding recipient was “deliberately indifferent” to the harassment. Id. at 642-43, 645, 650.

¹Yale reads Kelly's complaint as including a disparate treatment claim under Title IX as well. The reference in the complaint to a disparate treatment theory of liability is minimal. Kelly does not address its legal merits in her opposition to Yale's motion for summary judgment, nor has she come forward with any evidence to establish an issue of material fact that Yale's differential treatment of Kelly and Nolan, if any existed, was motivated by discriminatory intent. Therefore, the court finds that, if Kelly did assert this claim, she has abandoned it.

1. Severity of the harassment

Kelly alleges that, following Nolan's assault of her, Nolan's presence on campus and the accompanying risk that she might encounter him created a hostile environment that effectively deprived her of "the educational opportunities or benefits provided by the school." Id. at 650. There is no question that a rape, as alleged by Kelly, constitutes severe and objectively offensive sexual harassment under the standard set forth in Davis. Soper v. Hoben, 195 F.3d 845, 855 (6th Cir. 1999)(assertion that victim was raped, sexually abused and harassed "obviously qualifies" as severe, pervasive, and objectively offensive sexual harassment). Although Yale cannot be held liable for harassment of which it had no notice, see infra at 7-8, Kelly argues that, following the assault, Nolan's presence on campus was harassing because it exposed her to the possibility of an encounter with him. The court agrees that a reasonable jury could conclude that further encounters, of any sort, between a rape victim and her attacker could create an environment sufficiently hostile to deprive the victim of access to educational opportunities provided by a university. Kelly has therefore raised an issue of material fact with respect to the first element of the Davis test.

2. Notice to the University

Both parties concede that Yale received notice of Nolan's harassing behavior towards Kelly after the alleged rape took place. Therefore, under Davis, Yale cannot be held liable for the assault itself. See Davis, 526 U.S. at 642 (requiring actual notice); Reese v. Jefferson

School Dist. No. 14J, 208 F.3d 736, 740 (9th Cir. 2000)(school district not liable for harassment that occurred prior to victim's report to teacher or administrator). However, Kelly did notify Yale of the assault shortly after it occurred. Kelly asserts that she informed several members of the Yale faculty and administration about the assault on October 19, 1999. Even if Kelly did not provide notice on this date or it was somehow inadequate, it is undisputed that Kelly filed a written complaint on October 25, 1999. After Yale received notice of the harassing conduct, it had a duty under Title IX to take some action to prevent the further harassment of Kelly.

3. Deliberate indifference to the harassment

Yale argues that it is entitled to summary judgment because, as a matter of law, its response to Kelly's complaint was not "clearly unreasonable." Yale argues that, in response to Kelly's complaint, it followed its internal grievance procedures to their conclusion, procedures which resolved the matter within thirty-eight days. Kelly's complaint focuses on a slightly different issue, however. Kelly does not dispute that Yale, for the most part, followed its written grievance procedures. Nor does she dispute that those procedures eventually resulted in Nolan taking a leave of absence until Kelly could finish her studies at the Divinity School. She does dispute, however, that Yale's actions, immediately following her complaint and up to the conclusion of the internal grievance procedures, complied with the requirements of Title IX.

In order for Yale's conduct to be actionable under Title IX, Yale's "deliberate indifference must, at a minimum, cause students to undergo harassment or make them liable or vulnerable to it." Davis, 526 U.S. at 644-45 (internal quotation and citation omitted). Although a victim of peer harassment does not have a right to any particular remedial demand, immediate expulsion of her alleged harasser, or a remedy that would expose the school to a constitutional or statutory claim on the part of the accused, Title IX requires that the school make an effort to remedy known peer harassment in a manner that is not "clearly unreasonable." Id. at 648-49. According to Kelly, she repeatedly requested academic and residential accommodations after the assault. She related to administrators the discomfort and fear that she would feel if she encountered Nolan. She also communicated her concern about her course of study and her desire to continue her education without delay. Although Kelly was not subjected to further harassment by Nolan, it was her departure from her classes and her dormitory, not any immediate action taken by Yale, that assured that outcome. Therefore, a reasonable jury could find that Yale's response, or lack thereof, rendered Kelly "liable or vulnerable" to Nolan's harassment, id. at 644-45, and that Yale's failure to provide Kelly with accommodations, either academic or residential, immediately following Nolan's assault of her, was clearly unreasonable given all the circumstances of which it was aware.

The court notes that Kelly's requested academic accommodation – that she and

Nolan both be prohibited from attending class and provided with notes – may not have been feasible. Yale could have concluded that Kelly’s proposed solution could expose it to liability because it would penalize Nolan prior to any formal determination of wrongdoing on his part. Therefore, the court does not find that Yale’s refusal to bar Nolan from attending classes was clearly unreasonable. What is substantially less clear, however, is whether Yale’s particular course of action – in which minimal efforts were made to protect Kelly from further harassment prior to the completion of the grievance procedures – violated Title IX.

C. State Law Claims

1. Defamation

In her complaint, Kelly alleges that Yale conducted an open forum on March 17, 2000, in which Dean Wood made false and defamatory statements about her to members of the student body. “To prevail on a common-law defamation claim, a plaintiff must prove that the defendant published false statements about her that caused pecuniary harm. To be actionable, the statement in question must convey an objective fact, as generally, a defendant cannot be held liable for expressing a mere opinion.” Daley v. Aetna Life and Cas. Co., 734 A.2d 112, 129 (Conn. 1999). Kelly alleges that Dean Wood stated that Nolan’s assault on her was not legal rape, thereby implying that she was lying about the incident. The court cannot conclude, as a matter of law, that this statement is not actionable defamation. A

genuine issue of material fact exists as to whether or not the statement was false, defamatory (i.e., injurious to Kelly's reputation), or a statement of fact. Therefore, defendant's motion for summary judgment with respect to plaintiff's defamation claim is denied.

2. Negligence

Kelly's complaint alleges a cause of action in negligence, though she does not specifically delineate what actions by the defendant she considers breached the duty of care Yale owed to her. Yale reads Kelly's allegation that it "failed, refused or neglected to protect the plaintiff from sexual assault by a fellow student on the premises of the defendant" as a claim sounding in negligence. Compl. ¶ 24. Based on that assumption, Yale moves for summary judgment with respect to this claim, arguing that it owed no duty to Kelly to protect her from the alleged sexual assault. "The existence of a duty of care [is] an essential element of negligence. . . ." Burns v. Bd. of Educ. of the City of Stamford, 228 Conn. 640, 646 (1994). Kelly has not she created a genuine issue of material fact that Yale owed her any specific duty of protection. In fact, she submitted no opposition to defendant's motion for summary judgment on her negligence claim. Defendant's motion with respect to that claim is therefore granted.

3. Breach of Contract

Yale moves for summary judgment with respect to Kelly's breach of contract claim, arguing that Kelly has failed to provide any evidence indicating that a contract between her

and Yale existed. It is axiomatic that a plaintiff cannot sustain a claim for breach of contract unless she is able to demonstrate the existence of a contract that was allegedly breached. Kelly's allegations in her complaint are purely conclusory and do not even identify the contract term Yale allegedly breached. Further, Kelly has not come forward with evidence of the contract's existence or of its breach, nor has she filed any opposition to defendant's motion with respect to this claim. Therefore, defendants are entitled to summary judgment on the plaintiff's breach of contract claim.

4. Intentional Infliction of Emotional Distress

In order to establish a claim for intentional infliction of emotional distress, Kelly must demonstrate: (1) that the actor intended to inflict emotional distress; or that he knew or should have known that the emotional distress was a likely result of his conduct; (2) that the conduct was extreme or outrageous; (3) that the defendant's conduct was the cause of Kelly's distress; and (4) that the distress suffered by Kelly was severe. Petyan v. Ellis, 200 Conn. 243, 253(1986); see also Miner v. Town of Cheshire, 126 F.Supp.2d 184 (D. Conn. 2000). "Liability for intentional infliction of emotional distress requires conduct that is so extreme and outrageous that it goes beyond all possible bounds of decency, is regarded as atrocious, is utterly intolerable in a civilized society, and is of a nature that is especially calculated to cause, and does cause, mental distress of a very serious kind." Miner, 126 F.Supp.2d at 194.

Whether the conduct of the defendants is sufficient to satisfy the element of extreme and outrageous conduct is a question, in the first instance, for the court. See Johnson v. Chesebrough-Pond's USA Co., 918 F.Supp. 543, 552 (D. Conn.), aff'd, 104 F.3d. 355 (2d Cir.1996). However, where reasonable people would differ on whether the behavior involved is extreme or outrageous and where there are facts at issue which would weigh on the reasonableness inquiry, it becomes a question for the jury. McKlevie v. Cooper, 190 F.3d 58, 63 (2d Cir. 1999).

The court concludes, as a matter of law, that no reasonable jury could find that Yale's response immediately following Kelly's complaint was "extreme and outrageous." While there remain issues of fact as to whether Yale's actions were "clearly unreasonable," it cannot be said that what Yale did, or failed to do, taking the evidence in the light most favorable to the plaintiff, is "beyond all possible bounds of decency" or "atrocious." Therefore, defendant's motion for summary judgment with respect to Kelly's emotional distress claim is granted.

III. CONCLUSION

For the reasons stated above, defendant's motion for summary judgment [Dkt. No. 14] is GRANTED IN PART and DENIED IN PART. With respect to Kelly's claims for breach of contract, negligence, and intentional infliction of emotional distress, defendant's motion is granted. With respect to all other claims asserted in Kelly's complaint, defendant's

motion is denied.

SO ORDERED.

Dated at Bridgeport, Connecticut this 26th day of March, 2003.

_____/s/_____
Janet C. Hall
United States District Judge