ELA Case Commentary

In-depth explanation and commentary on a case of interest February 2019

Doe v. George Washington University: A University Breached Its Contract with Student by Denying Him an Opportunity to Appeal a Disciplinary Panel Ruling Finding Him Responsible for Sexual Assault

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In *Doe v. George Washington University*,[1] a federal district court ruled that George Washington University (GW) breached its contract with John Doe, a male undergraduate, by denying him an opportunity to appeal an adverse ruling by a university disciplinary panel, which had ruled that Doe sexually assaulted a female undergraduate by having sex with her when she was too intoxicated to consent. The court determined that the university's Code of Student Conduct imposed contractual obligations upon GW, including the obligation to allow Doe an opportunity to appeal an adverse ruling in a disciplinary proceeding.

Facts

On September 12, 2015, John Doe, a GW sophomore, encountered Jane Roe, a female undergraduate, at a college party. According to the facts set forth by a federal court, Doe was a virgin and a nondrinker. Roe, who had been drinking at the party, allegedly told Doe she wanted to have sex. Roe ordered an Uber taxi, and Roe and Doe traveled to Doe's dorm room, where they had sexual intercourse.[2]

On October 30, 2017, almost two years after the incident, Roe filed a complaint with GW's Title IX enforcement office, claiming Doe had sexually assaulted her. Roe contended she was so intoxicated when she had sex in Doe's dorm room that she had been unable to consent.

A hearing was conducted before a panel made up of two students and "one low-level administrator who presided and served as the fact finder."[3] The panel found Doe to have committed a sexual assault on Roe and suspended him from the university for one year, in spite of the fact that he was a senior and had met all the academic requirements for graduation. The ruling delayed Doe's graduation from spring 2018 until January 2019.[4]

Pursuant to Section 33 of the GW Code of Student Conduct, Doe appealed the panel's ruling to Robert Snyder, GW's Executive Director of Planning and Outreach. Under GW's Code, Snyder's responsibility was to review Doe's appeal to determine if Doe's appeal was viable. Snyder determined that Doe's appeal was not viable and denied him the right to appeal the disciplinary panel's ruling. Doe then filed suit in federal court and moved for summary judgement on his breach-of-contract claim.

Federal District Court: GW Breached a Contractual Obligation to John Doe

Doe argued to the federal court that GW breached a contractual obligation to grant him the opportunity to appeal the disciplinary panel's adverse ruling. Under Article 33 of the Code, "Appeals must be based on new information that is relevant to the case, that was not previously presented at the hearing or conference, and that significantly alters the finding of fact."[5] Doe desired to present new evidence on appeal: specifically, a toxicologist's report that challenged the veracity of Roe's testimony about how much alcohol she had consumed, a record of Roe's cellphone messages on the night of her encounter with Doe, and a male witness's testimony that Roe did not appear to be intoxicated at the party.

In response to Doe's argument, GW argued that the Code of Student Conduct did not impose contractual obligations upon it.[6] It also maintained that Mr. Snyder, who denied Doe an appeal, had acted correctly in interpreting the Code of Student Conduct.[7]

Judge Collyer rejected GW's arguments. "The Court finds that the Code sections at issue here are binding on the University, and failure to follow them, as alleged, constitutes a breach of contract," Judge Collyer ruled.[8] In the judge's view, Mr. Snyder, whose task was to consider the viability of Doe's appeal, had "misinterpreted his function" under the Code of Student Conduct when he denied Doe's appeal.[9]

As Judge Collyer pointed out, Snyder had denied Doe a right to appeal based on Snyder's judgment that the appeal had no merit. Under the terms of the Code of Student Conduct, the judge explained, "Mr. Snyder's position was restricted to

determining whether there was 'new' evidence (there was) and whether that new evidence, combined with the record evidence, had a chance of success on appeal—without the substitution of his opinion on the merits for that of the appellate panel."[10]

The court then determined the proper remedy for GW's contract violation. Although GW argued that Doe's appeal should be sent a second time to Mr. Snyder, the court ruled instead that Doe's appeal should proceed forward through university channels and that Doe should be permitted to submit his new evidence.

Aftermath

After the court's decision, which was rendered in August 2018, Doe proceeded with his university appeal. In September 2018, A GW appeals panel affirmed the original hearing panel's finding of responsibility, apparently not persuaded that Doe's additional evidence should change the outcome.[11] Doe then returned to federal court, where he pursued his lawsuit against GW for breach of contract, breach of the duty of good faith and fair dealing, disparate treatment under Title IX, disparate impact and disparate treatment under the D.C. Human Rights Act (DCHRA), and negligence.

GW moved to dismiss all of Doe's claims, and Judge Collyer issued an opinion on December 20, 2018, dismissing many of Doe's claims, but allowing him to proceed with claims for disparate treatment under Title IX and the DCHRA as well as his claim for breach of contract due to denial of his appeal.[12]

Conclusion

In recent years, a number of male college students have filed lawsuits in federal court against public universities, arguing they were denied due process in the way sexual assault hearings were conducted. Indeed, the Sixth Circuit Court of Appeals has ruled twice that college students defending charges of sexual assault at university disciplinary hearings are constitutionally entitled to confront their accusers.[13] In both those cases, universities disciplined male college students for sexual misconduct without allowing them the right to question their accuser. (In both cases, the Sixth Circuit approved a modified form of questioning whereby the accused student's agent or other third party would question the accuser in order to minimize the trauma and embarrassment that an accuser might experience).

Doe v. George Washington University involves similar claims of unfair treatment, but the defendant in the case was a private university and the plaintiff alleged a breach of contract rather than a constitutional violation. *Doe v. George Washington University* is another reminder that universities conducting sexual misconduct hearings under Title IX should scrupulously conduct those hearings in a manner that ensures fair and unbiased treatment to both the accuser and the accused. As several federal courts have held, public universities have a constitutional obligation to afford due process in these hearings. *Doe v. George Washington University* illustrates that private universities have an obligation to conduct hearings in accordance with their own rules, an obligation that may be contractually required.

Endnotes

1. Doe v. George Washington Univ., 321 F. Supp. 3d 118 (D.D.C. 2018).
2. *Id*. at 119-20.
3. *Id*. at 120.
4. Doe sought a preliminary injunction enjoining the university from suspending him until after his claims were fully litigated, but the request was denied. Doe v. George Washington Univ., 305 F. Supp. 3d 126 (D.D.C. 2018).
5. Doe v. George Washington Univ., 321 F. Supp. 3d at 124 (quoting George Washington University's Code of Student Conduct, § 33).
6. *Id*. at 123 ("GW protests that the University did not intend to be bound by the Code and that there is no mutuality of obligation, so that the Code cannot be interpreted as a contract.").
7. *Id*. at 127 ("GW insisted that such a decision [to deny Doe an appeal] is properly made by Mr. Snyder.")
8. *Id*. at 124.
9. *Id*. at 128.
10. *Id*. at 127.
11. Doe v. George Washington Univ., Civil Action No. 18-553 (RMC), slip op. at *9-10, 2018 U.S. Dist. LEXIS 213980 (D.DC. Dec. 20, 2018).
12. *Id*. at *30.
13. Doe v. Univ. of Cincinnati, 872 F.3d 393 (6th Cir. 2017); Doe v. Baum, 872 F.3d 393 (6th Cir. 2017); Doe v. Baum, 903 F.3d 575 (6th Cir. 2018).

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