

Sexual Harassment: What happens when a private internal investigation becomes public?

By Daniela S. Harris, J.D.

In [Simons v. Yale University](#), the plaintiff, Dr. Michael Simons, brought seven claims, including gender-based discrimination under both Title VII and Title IX, against Yale University and individual defendants. The district court granted in part and denied in part the Defendants' motion to dismiss, allowing his claims under Title VII and Title IX to proceed.

Factual background

In 2009, Dr. Simons was a tenured professor and an endowed chair with several leadership positions, including the chief of cardiology at the Yale School of Medicine, the chief of cardiovascular medicine at Yale-New Haven Hospital, and the director of the Yale Cardiovascular Research Center.

In early 2011, following an inquiry by the Department of Education, Yale convened a university-wide committee to enforce its sexual misconduct policy. In February 2010, Dr. Simons sent a "declaration of love and romantic interest" to a junior colleague (referred to as Dr. Doe). Dr. Doe indicated to Dr. Simons that his feelings were not reciprocated, and their email communications ended in 2011. Subsequently, another colleague in the cardiology department with whom Dr. Doe was in a romantic relationship began experiencing professional difficulties, which the couple attributed to Dr. Simons's jealousy. In 2013, Dr. Doe filed an internal complaint accusing Dr. Simons of sexual harassment. The university committee found him responsible for violating the sexual misconduct policy. It recommended suspension and removal from his position as the chief of cardiology for five years. Upon appeal, the suspension was reduced to 18 months by the provost.

Although the sexual harassment proceedings were meant to be confidential, Dr. Simons alleged that his suspension was leaked to the newspapers, which led to public demands for more stringent disciplinary measures. As a result, Yale forced him to resign as the chief of cardiology. When another series of stories was published about him, he was asked to resign from his position as the director of the Cardiovascular Research Center. When he declined to resign, he was removed from that position involuntarily. While Dr. Simons was suspended as the chief of cardiology, he retained his endowed chair and remained a faculty in good standing. The endowed chair helped him secure additional grants.

In 2017, as the #MeToo movement began to gain traction, someone contacted the Berliner family, which had endowed his chair, and informed them of Dr. Simons's sexual harassment finding. The family requested that Yale remove Dr. Simons from the professorship. In the spring of 2018, Dr. Simons was asked to give up the endowed chair in exchange for another endowed chair, to which he agreed. Initially, Dr. Simons received a letter from Yale's president congratulating him on his new appointment. Three months later, Yale released a public statement that Dr. Simons's title had changed because of concerns expressed by the Berliner family. Later that year, the dean of the Yale School of Medicine told Dr. Simons that he could

either resign from his new endowed professorship or be removed from the position. Dr. Simons retained counsel and filed for injunctive relief to stop Yale from removing his endowed chair, which the court denied. Dr. Simons continues to receive financial support instead of the endowed chair.

District Court's Decision

Concerning his Title VII claim, Dr. Simons argued that he was punished twice under Yale's sexual misconduct policies when he was removed from the endowed chair, which led to a loss of more than \$100,000 in wages, grant opportunities and other economic damages. The court agreed that Dr. Simons had satisfied the prima facie elements of a Title VII complaint at this stage of litigation. He successfully established that (1) he was a member of a protected class; (2) he was qualified for his position; (3) he suffered an adverse employment action; and (4) there was at least minimal support for the proposition that the employer was motivated by discriminatory intent.

The Defendants did not dispute that Dr. Simons is a Caucasian male. But they argued that he was not qualified for the endowed chair, having violated the university's sexual misconduct policy. They also argued that he did not suffer an adverse employment action as he continued to be a physician, researcher, and faculty member. And lastly, they attributed the removal of his endowed professorship to his past misconduct rather than to his membership in a protected class. The court agreed with Dr. Simons and denied the Defendants' motion to dismiss, emphasizing the very low burden for discrimination plaintiffs at this stage of litigation.

As to the Title IX claim, Dr. Simons argued that the Defendants violated Title IX by treating women who engaged in the same misconduct more favorably than men. He alleged that the only individuals disciplined twice for the same conduct were men. This argument is called a selective enforcement claim. Rather than disputing the outcome of the internal adjudication process (also known as an erroneous outcome claim), a selective enforcement claim is an assertion that even if university policy was violated, the decision to initiate disciplinary proceedings or the severity of the penalty is motivated by gender bias.

The court noted that the Second Circuit, where Yale is located, had not yet determined whether a plaintiff can sue for employment discrimination under Title IX. The district courts had conflicting views on this issue. For that reason, the court permitted the Title IX claim to proceed through the end of discovery to be addressed at the summary judgment stage.

Key Takeaway

This case is not precedential, and the legal analysis is straightforward. Yet, it is factually noteworthy because it highlights some of the hidden challenges of investigating and adjudicating allegations of sexual harassment at an academic medical center. There are no winners in a sexual harassment investigation, even in the most cut and dried cases. The perpetrators may be punished, but the damage to the complainant cannot be undone with an

investigation. And determining the appropriate and proportional punishment for the respondent can be trying even for well-trained, impartial adjudicators. What is clear is that once the public starts weighing in on how universities should administer their harassment policies in specific cases, it strains the university's ability to protect the privacy of the involved individuals and undermines the integrity of the adjudication process. In this case, given the reputation of the institution, Dr. Simons's prominent role, and the timing of the #MeToo movement, a confidential, internal investigation became a matter of public knowledge, which had unintended negative consequences for everyone involved.