



Retaliation Claim Reinstated

February 22, 2013 - 3:00am

By

[Carl Straumsheim](#)

A federal appeals court on Thursday directed a lower court to revisit an April 2011 decision that Hofstra University did not retaliate against a graduate student who reported harassment she experienced as team manager of the institution's football program.

Lauren E. Summa, a graduate student at Hofstra between 2006 and 2009, brought the lawsuit against the institution after a graduate assistantship position with its Office of University Relations was rescinded. The previous fall, Summa had filed a report to the University's Public Safety Department about an incident during a bus ride with the football team when she said that several members of the team had "made a variety of lewd comments."

Summa has argued the rescinded job offer and the harassment she experienced while serving as a team manager violate Title VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972 and state discrimination laws. A federal district court disagreed, but a three-judge panel in the U.S. Court of Appeals for the Second Circuit reversed its ruling on the retaliation issue.

Hofstra claims the job offer was rescinded because "Summa had overstated her qualifications, misrepresented her academic majors, and received 'a lackluster reference,' " which the appeals court said could be seen as "a pretext for a retaliatory motivation" because of the more intensive hiring process Summa had been subjected to. In addition to being the only applicant whose references were contacted, Summa was also required to participate in an in-person interview with Hofstra's vice president of university relations.

But the court affirmed the university could not be held liable for harassment, highlighting head football coach David Cohen's response to the incidents.

"Each complaint that was brought directly to Cohen's attention was dealt with quickly and in proportion to the level of seriousness of the event," says the decision. "The fact that Cohen took action at once -- completed within just days in all cases -- speaks to the appropriateness of the University's response in this case."

"In our view, the case has always been about retaliation," said Douglas H. Wigdor, who represents Summa. He said his client is "extremely happy" with the ruling, though he added he believed the case will likely proceed to a trial barring a settlement.

Neither Hofstra University nor its lawyer responded to a request for comment.