

## Students' Complaints Protected

A faculty member's attempt to sue two former students who filed complaints against him has proved unsuccessful. Dr. Gabe Keri was employed in the department of Education by Indiana University - Purdue University at Fort Wayne, an institution managed by Purdue. Two graduate students, after taking classes from Keri, complained to the university's affirmative action office that Keri has subjected them to sexual harassment. The charges were investigated pursuant to Purdue's procedure, and Keri was found to have created a hostile environment and to have harassed one of the students. As a result, he was removed from all teaching responsibilities and any position involving oversight of students.

Keri subsequently filed suit in federal court against Purdue, which was dismissed on summary judgment. He also sued the students in state court, claiming that they were guilty of libel, slander, and malicious interference with his employment contract. The case ultimately reached the Indiana Supreme Court. The court first noted that an absolute privilege protected relevant statements made in the course of a judicial proceeding, regardless of the truth of the statement or the motivation in making it. Though the Purdue grievance process was clearly not a judicial proceeding, the court was persuaded that a similar privilege should exist in that process. This position was consistent with rulings in several other jurisdictions that communications to school authorities raising complaints against educators are to be viewed as having the same absolute privilege given to statements in judicial proceedings. Any other rule, the court reasoned, might discourage the making of legitimate complaints - a student might simply do nothing rather than run the risk of facing a retaliatory suit of the kind filed by Keri in this instance against the student complainants.

The court finally expressed a preference for having issues relating to instructor misconduct, including both whether the misconduct occurred and whether the complaining students had abused the process by making false accusations, handled by institutional processes. An institution, acting through its officials and procedures, can bring special expertise to judgments about what is and is not proper conduct in an academic setting. Allowing claims such as Keri brought to proceed would have the undesirable consequence of inserting the courts into that arena. If Keri has a complaint about the adequacy or fairness about procedure, the court observed, that should be raised as a claim against Purdue, not the students. *Hartman v. Keri*, No. 02S03-0706-CV-233 (Ind. Apr. 1, 2008).

The courts are continuing to experience some tension as they seek to protect the rights of those who claim to be victims of discriminatory or harassing conduct while also protecting the rights of those accused of carrying out such actions. In this case, the balance was struck in favor of protecting student complainants against retaliatory legal claims brought by the alleged faculty perpetrator. This result is not surprising given the fact that institutional proceedings had already determined that the faculty member was culpable.