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Inside the Process That Jump-Starts Federal Sex-Harassment Lawsuits

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8–10 minutes



Celeste Kidd, an associate professor of neuroscience at the U. of Rochester, was named among Time magazine's "Person of the Year" honorees for speaking up about her alleged mistreatment. Over the last 20 years, at least 1,300 sex-based harassment charges have been filed with the EEOC by workers like Kidd against university employers. AP Photo, Brett Carlsen

The University of Rochester filed a [formal rebuttal](#) last week to allegations that it had allowed a professor's sexual harassment to

proceed unabated over a decade. T. Florian Jaeger, the professor of linguistics and computation accused of the misconduct, is on leave from the university. Rochester's response came after nine current and former professors and students [filed](#) a federal lawsuit against the university in December.

Much had precipitated the latest stages of the legal dispute. Hundreds of scholars [signed](#) a petition advising prospective students against enrolling at Rochester. Two of Jaeger's accusers — Jessica Cantlon and Celeste Kidd, both associate professors — were named among *Time's* Person of the Year. And the university's president, Joel Seligman, [resigned](#).

But [before](#) all of that happened, a 111-page [charge](#) was filed with the U.S. Equal Employment Opportunity Commission describing Jaeger's alleged inappropriate conduct. Alongside internal and external reviews, lawsuits, and media exposés, EEOC charges play a critical though less-recognized role in the response to sexual-harassment claims. Over the last 20 years, at least 1,300 sex-based harassment charges have been filed with the EEOC by workers like Cantlon and Kidd against their university employers.

Sometimes those charges are the prelude to a federal lawsuit. But the process triggered by a charge is meant to work to the benefit of both parties, said Oren R. Griffin, associate dean and professor of law at Mercer University. An EEOC charge of sexual harassment offers an opportunity for a mediated resolution proctored by the commission, in which an employee and employer can both avoid a prolonged and expensive court fight.

Older and More Diverse

How often does the process work as intended, and who uses it? Data on EEOC charges, originally obtained by [BuzzFeed](#), shed some light on the EEOC path and where it leads.

The people who have brought EEOC sex-harassment charges against universities over the last 20 years skew more diverse and slightly older than petitioning workers across all industries, according to a *Chronicle* analysis of the Buzzfeed data.

The median age of a higher-ed employee charging sexual harassment during those two decades was 39 years old, compared with the overall labor force's median age of 35. Slightly more than 27 percent of claimants within academe were African-American, compared with 22 percent of petitioners overall. (Forty-eight percent of petitioners in higher education were white.)

Women filed 84 percent of EEOC sexual-harassment claims against colleges. Of claims that disclosed a sector of employment, roughly two-thirds were filed against public colleges and universities.

In recent years, sex-based employment claims against colleges have been in decline. From 1996 to 2005, the commission received 70 sexual-harassment claims or more each year from self-declared employees within the higher-education sector. But

after 2005, fewer claims were filed each year, with just 35 claims in 2015 filed by employees who identified themselves as working in academe.

What, if anything, should be made of that drop? Employees filing a claim are under no obligation to report their industries, and that alone may explain the drop in claims sourced to the college workplace over the last decade, an EEOC representative said.

Michele A. Paludi, a professor of human resources and leadership at Excelsior College, added that EEOC charges are just one component of a broader system of combating sexual harassment — a system many employees choose not to enter because of fear of retaliation. Across all industries, she said, retaliation is the most [common reason](#) cited for filing a charge with the EEOC.

'Due Diligence'

Once a charge is filed, the commission can take on many [roles](#) — mediator, investigator, or plaintiff.

If the parties agree to mediation — an informal process that does not try to identify wrongdoing — the EEOC will act as the referee. If the parties don't want mediation, or find that process unsatisfying, the commission can also act as an investigator, electing to subpoena records if need be.

If the commission's investigation yields no evidence that a law was violated, employees can still receive a "[right to sue](#)" letter — a necessary step to file a lawsuit charging discrimination in federal court. (The EEOC issues such letters regardless of whether it finds merit in a complaint.)

But if the commission determines that the law has been violated, complainants have two options. They can request a right-to-sue letter that allows them to pursue a federal suit on their own. Cantlon and Kidd, the Rochester professors, received such a letter before pursuing their case against the university. (The EEOC made no determination on the merit of their charges against Rochester.)

Or they can ask the EEOC to represent them. If they take that route, the commission will first seek a voluntary settlement with the employer. If a settlement can't be reached, the EEOC or the Department of Justice will file a lawsuit on the claimant's behalf. In 2008, the government did just that on behalf of [five women](#) against Lafayette College. The women charged a campus police officer with groping their breasts and subjecting them to lewd and vulgar behavior. In 2010, Lafayette agreed to a \$1-million settlement to end the suit, though the college did not [admit](#) liability.

Between 2010 and 2017, according to EEOC data, the commission [found](#) 53 percent of the sexual-harassment claims it investigated to be "without reasonable cause" — that is, unable to be substantiated. An additional 22 percent of charges were "administratively closed" for one of a number of reasons — because a complainant stopped communicating with the commission, for example, or the commission did not have legal jurisdiction to address a claim. The remaining 24 percent of claims were resolved through actions like settlements, conciliation or the withdrawal of a charge after the claimant received benefits. The commission [estimated](#) that the investigation and resolution process spanned an average of 10 months in 2015.

It's an involved process, and colleges typically take it seriously,

Griffin said. One of the most important aspects of the EEOC claims process, he said, is that it prohibits employers from retaliating against those who file complaints. There's a lesson for colleges to learn about their internal processes, he added: Demonstrate a similar commitment against retaliation, and you'll encourage more workers to come forward when they have been harassed.

Paludi, who has consulted on sexual-harassment issues since the 1980s, said an EEOC claim should prompt a college to conduct a systematic review of its reporting and response processes. The dismissal of a supervisor or the resolution of a dispute, Paludi said, should be understood by colleges as the start of their efforts against campus sexual harassment, not the end.

"They need to do their due diligence," she said, "and not just see it as a one-time thing."

Clarification (2/15/2018, 3:17 p.m.): This article has been updated to clarify the EEOC's role in a complaint against the University of Rochester. The commission issued a "right to sue" letter but did not make a determination about the merits of the charges against the university.