



Tennis Coach Wins First Set In Gender Bias Match Against University

Insights

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It goes without saying that federally funded educational institutions cannot discriminate on the basis of gender. Some federal courts believe Title IX is the proper statute upon which to base employment discrimination claims, while others believe Title VII of the Civil Rights Act of 1964 is the correct vehicle. Either way, there is no doubt that some form of remedy exists for such discrimination. In 2005, in fact, the U.S. Supreme Court held that a coach who suffers an adverse employment action for complaining about inequities in a women's sports program can bring a Title IX claim for retaliation (*Jackson v. Birmingham Board of Educ.*).

But what about a male coach who claims his employment is adversely impacted by Title IX violations affecting a women's sports program—does he have a claim for discrimination under Title IX? In a very recent decision, a federal court in New York allowed just such a claim to proceed. The July 26, 2018 court order in *Pejovic, et al. v. State Univ. of New York at Albany* could provide guidance to educational institutions about the risks you may face when making decisions some could construe as being gender-related.

University Draws A Line And Eliminates Tennis Program

Gordon Graham coached the women's tennis team at the State University of New York at Albany for approximately five years. In 2016, the university terminated the program and, according to Graham, gave the coach "meaningless administrative tasks and no professional coaching opportunities." Sometime later, the university notified Graham that his contract would not be renewed when it expired.

Graham filed a complaint with the federal Office of Civil Rights (OCR), asserting that the termination of the women's tennis program violated Title IX. The OCR concluded that the complaint was substantiated, and Graham—along with several former players—filed suit alleging the university violated their Title IX rights by terminating the women's tennis program.

Specifically, Graham alleged that "the unlawful termination of the varsity intercollegiate women's tennis team" by the university was intentional and wrongful discrimination "on the basis of the sex of the women student-athletes he coached, causing him irreparable harm and injury." The university moved to dismiss Graham's claim, arguing that he had failed to state a claim under Title IX upon which relief could be granted. In particular, the university argued that Graham had failed to state a

claim because the alleged discrimination was not based on *his* sex, but on the sex of his players.

Court Gets In The Swing Of Things, Permits Claim To Proceed

The court rejected the university's argument. Judge Thomas McAvoy from the Northern District of New York federal court acknowledged that, under anti-discrimination laws, "the ultimate issue is the reasons for the *individual plaintiff's* treatment, not the relative treatment of different *groups* within the workplace," and that Graham could not assert a Title IX claim premised on discrimination faced by others. But the court concluded that Graham was not making such an assertion.

Rather, Judge McAvoy concluded that Graham was claiming that he, too, suffered gender discrimination because of the termination of the women's tennis program. The court denied the university's motion to dismiss and allowed the claim to proceed, noting that, under the university's proposed standard, "Graham could only have a claim if he were a woman coaching women." But the match is by no means over. By granting Graham this victory, the judge has only permitted him to proceed to trial to make his case to a jury. And of course, even if Graham prevails at trial, the university still has the option of appealing the case to the 2nd Circuit Court of Appeals—so this match is far from concluded.

And the decision by the court was not a complete victory for Graham. In a curious twist, the university also argued that Graham could not prevail on a retaliation claim under Title IX because the university had made the decision not to renew his contract before he filed his complaint with the OCR. Judge McAvoy agreed, noting that any such claim would be unsuccessful for the reasons articulated by the university. The court granted the university's motion to dismiss "with respect to any retaliation claim that Graham may raise."

The Ball Is In Your Court: What Will You Do?

This case highlights the broad scope of Title IX: "no person in the United States shall, on the basis of sex, be excluded from participating in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal Financial Assistance." It also highlights the complex interplay between Title IX and Title VII, demonstrating that courts may sometimes be unpredictable when navigating gender discrimination claims.

More importantly, from a practical perspective, this case reinforces the importance of examining each and every decision that might impact educational athletics and other programs from all angles. Coaches and other employees associated with those programs who are affected by those decisions may have rights that are not immediately obvious, so you should consult with your Fisher Phillips lawyer before taking any critical steps.

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