



California Federal Judge Rules Title IX Covers Sexual Orientation Discrimination

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In December 2015, a federal judge in California ruled that discrimination based on sexual orientation violates Title IX, broadly interpreting the statute that prohibits sex discrimination in colleges and universities.

By way of brief background, Haley Videckis and Layana White (collectively “Plaintiffs”), former members of Pepperdine University women’s basketball team, filed a lawsuit against Pepperdine University (the “University”) in California federal court alleging violations of Title IX, which prohibits sex discrimination in federally funded education programs and activities. Specifically, the Plaintiffs claim that the University and its employees harassed and discriminated against Plaintiffs because they were in a same-sex relationship. Plaintiffs further allege that the coaching staff told Plaintiffs that lesbian relationships “will not be tolerated”, questioned Plaintiffs about their sexual orientation, sought access to their medical records, and refused to process Layana White’s NCAA appeal to play as a first-year transfer student.

The University sought to partially dismiss Plaintiffs’ claims by arguing that, among other grounds, Title IX does not apply to discrimination claims based on sexual orientation.

In an order dated December 15, 2015, Judge Pregerson denied the University’s motion to dismiss, thereby allowing the case to proceed. Specifically, Judge Pregerson ruled that claims of discrimination based on sexual orientation are “covered by...Title IX, but not as a category of independent claims separate from sex and gender stereotype.” Judge Pregerson opined that “the line between sex discrimination and sexual orientation discrimination is ‘difficult to draw’ because that line does not exist...” The distinction between gender stereotyping and sexual orientation discrimination “is illusory and artificial,” wrote Judge Pregerson. “Plaintiffs allege that they were told that ‘lesbianism’ would not be tolerated on the team,” Pregerson wrote. “If plaintiffs had been males dating females, instead of females dating females, they would not have been subjected to the alleged different treatment,” he said, opening that the Plaintiffs maintain a “straightforward claim of sex discrimination.”

Several months prior to Judge Pregerson’s ruling, the Equal Employment Opportunity Commission (“EEOC”), the agency of the United States Government that enforces federal employment discrimination laws, opined on this issue. Indeed, the EEOC has been a paramount leader on this issue over the past few years. For example, in 2012, the EEOC specifically acknowledged that transgender discrimination is a form of sex discrimination under Title VII. Most recently, in July 2015, the EEOC ruled that Title VII also covers anti-gay discrimination and discrimination based on sexual orientation.

Over the past few years, both administrative agencies and courts alike have focused on whether federal sex discrimination law protects against sexual orientation discrimination. Institutions are advised to pay close attention to evolving Title IX issues, as they have the potential to have significant practical as well as legal implications.

Please note that this is a general overview of developments in the law and does not constitute legal advice. Nothing herein creates an attorney-client relationship between the sender and recipient.