


THE NATIONAL LAW REVIEW



Search bar with a magnifying glass icon and a hamburger menu icon on the right.

35 NEW ARTICLES

Advertisement

Maritime Injury Lawyer 



We have helped thousands of injured fishermen, maritime workers, and their families.

Title IX Claims May Proceed under ‘Controlling Authority’ Theory

infolinks **on C. Glass**

TCPA Compliance Firewall
Blacklist Alliance

Reduce Your Risk and Expense Of TCPA Lawsuits- Request A Demo Today.

 Like 1

 Tweet

Monday, August 26, 2019

Denying a high school athletic association’s motion to dismiss a complaint alleging violations of Title IX of the Education Amendments of 1972, a federal district court has held, “the Plaintiffs have provided sufficient factual matter to plausibly allege that the [Oahu Interscholastic Association] may be subject to the anti-discrimination provisions of Title IX under a ‘controlling authority’ theory.”

In *A.B. v. Hawaii State Department of Education*, athletes on the female high school water polo and swim team filed a class action lawsuit against Oahu Interscholastic Association (“OIA”) and the Hawaii State Department of Education (“DOE”) alleging violations of Title IX. In their three-count complaint, the plaintiffs claim the defendants violated Title IX based on:

1. their failure to take remedial actions to meet the anti-discrimination provisions under Title IX, and their continued unequal treatment of female athletes;
2. their failure to provide female athletes with equivalent athletic participation opportunities; and
3. the DOE's retaliation against the plaintiffs for their attempts to report or discuss the DOE's practice of sex discrimination.

The DOE is a state administrative agency managing 292 schools in Hawai'i, including the plaintiffs' school, James Campbell High School ("Campbell"). The OIA is an unincorporated athletic association consisting of the DOE's secondary schools in Oahu, which includes Campbell. The plaintiffs alleged that the DOE receives federal financial assistance and, therefore is subject to Title IX's anti-discrimination provisions. Since the OIA's Executive Director is a DOE employee and all five members of the OIA Executive Council are principals of DOE high schools, the plaintiffs contended that "the OIA is an instrumentality of, and is controlled by the DOE, and that they are pervasively entwined." Based on these connections, the plaintiffs alleged the OIA also receives federal financial assistance and is subject to the provisions of Title IX.

According to the plaintiffs' complaint, female athletes at Campbell are treated worse, receive fewer benefits and fewer opportunities than male athletes, and the OIA's policies and practices control or influence this disparate treatment immensely. The plaintiffs claimed their allegations are evidenced by OIA's competitive facilities, scheduling of games, travel opportunities, and publicity and promotion of athletic teams. They also claimed that the DOE failed to provide its female athletes with athletic locker rooms, practice and competitive facilities, equipment and supplies, availability and quality of coaching, medical and training services and facilities, and publicity and promotion.

Further, the plaintiffs alleged that the DOE and the OIA consistently give better opportunities to boys' athletic programs when determining facility use and scheduling, including allocating a majority of available Friday night spots to boys' programs. In addition, they claimed the male athletes received better travel and publicity opportunities (for example, they were sent off the island for athletic competitions).

The OIA filed a motion to dismiss the complaint pursuant to Federal Rule of Civil Procedure 12(b)(6), claiming it did not allege that the OIA receives federal funds as required under Title IX. The plaintiffs argued that the facts are sufficient in the complaint to support their theory that OIA indirectly receives federal funds and that the OIA is subject to Title IX because it is the controlling authority over the federally funded program.

Under Title IX, "[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." 20 U.S.C. § 1681. Therefore, to be subject to Title IX liability, an entity must be a "program or activity" as defined by Title IX and receive "Federal financial assistance."

Title IX broadly defines "program or activity." The definition encompasses the operations of: a

“department, agency, special purpose district, or other instrumentality of a State or of a local government”; a local educational agency; an “entire corporation, partnership, or other private organization, or an entire sole proprietorship”; and any other entity that is established by two or more of the foregoing entities. 20 U.S.C. § 1687.

The OIA argued that, because the plaintiffs’ complaint did “not allege that any federal funds were earmarked for the purpose of the OIA,” it was not liable under Title IX and was entitled to be granted its motion to dismiss.

The district court said that the plaintiffs’ complaint provided the following: the DOE “receives federal financial assistance and is subject to the anti-discrimination provisions of Title IX; that the OIA has controlling authority over the DOE’s interscholastic athletic programs, including competitive facilities; scheduling of seasons, games, and tournaments; travel; publicity and promotion; and budget that the OIA indirectly receives federal financial assistance; that the OIA acts under the control of and in close coordination with the DOE and makes decisions concerning interscholastic athletics at Campbell; and finally, that the Executive Director of the OIA is a DOE employee, and all five regular members of the OIA’s Executive Council are principals of DOE high schools and therefore also DOE employees.”

Accepting the plaintiffs’ allegations as true, as required when dismissal is sought based on Fed. R. Civ. P. 12(b)(6), the court concluded the plaintiffs had stated sufficient allegations to support a claim that the OIA is an indirect recipient of federal funds and subject to Title IX.

Jackson Lewis P.C. © 2019

Advertisement

Hearing Loss From 3M Earplugs?

Serve In Military 2003 - 2015?

Those who served in the military between 2003 and 2015 AND Were issued 3M Earplugs

seegerweiss.com

OPEN



PRINTER-FRIENDLY

EMAIL THIS ARTICLE

DOWNLOAD PDF

REPRINTS & PERMISSIONS

RELATED ARTICLES

Federal Court Judge: Private College Denied Due Process to Football Player Accused of Sexual Misconduct

Jury Rules for NCAA in First Sports Concussion Case Tried to Verdict

Play for Pay Won't Go Away: The NCAA Is Again Defending Antitrust Litigation Over Limits on Payments to Student Athletes

TRENDING LEGAL ANALYSIS

Title IX Claims May Proceed under 'Controlling Authority' Theory

By Jackson Lewis P.C.

EPA Proposes to Designate 20 Chemical Substances as High-Priority Substances for Risk Evaluation under TSCA

By Bergeson & Campbell, P.C.

Vultures Circling as Bill to Expand California FCA to Tax Looms in Legislature

By McDermott Will & Emery

FERC Approves MISO's Tariff Change Permitting Generators to Voluntarily Share Interconnection Facilities

By Sheppard, Mullin, Richter & Hampton LLP

Advertisement



Sherman Local Counsel

Federal and State

Local counsel for complex cases: business, insurance, trade secret, patent, estate, injury

somalaw.net

OPEN



Part Time Jobs for Seniors

Ad StuffAnswered



Good News If Your Knees Hurt

Ad Arthrozene



Congress Questions DHS on Immigration Processing Delays

natlawreview.com



Best Places to Retire 2019

Ad International Living



Proposed H-1B Cap Registration Fee Rule Cleared by OMB

natlawreview.com



Obesity "Regarded As" Disability Under ADA

natlawreview.com

REVIEW

TH CARE LAW

GRATION

.LECTUAL PROPERTY LAW

RANCE

R & EMPLOYMENT

ATION

RSECURITY MEDIA & FCC

IC SERVICES, INFRASTRUCTURE,
SPORTATION

E COLLAR CRIME & CONSUMER RIGHTS

LAW STUDENT WRITING COMPETITION SIGN UP FOR NLR BULLETINS TERMS OF USE PRIVACY POLICY FAQs

You are responsible for reading, understanding and agreeing to the National Law Review's (NLR's) and the National

Law Forum LLC's [Terms of Use](#) and [Privacy Policy](#) before using the National Law Review website. The National Law Review is a free to use, no-log in [database](#) of legal and business articles. The content and links on www.NatLawReview.com are intended for general information purposes only. Any legal analysis, legislative updates or other content and links should not be construed as legal or professional advice or a substitute for such advice. No attorney-client or confidential relationship is formed by the transmission of information between you and the National Law Review website or any of the law firms, attorneys or other professionals or organizations who include content on the National Law Review website. If you require legal or professional advice, kindly contact an attorney or other suitable professional advisor.

Some states have laws and ethical rules regarding solicitation and advertisement practices by attorneys and/or other professionals. The National Law Review is not a law firm nor is www.NatLawReview.com intended to be a referral service for attorneys and/or other professionals. The NLR does not wish, nor does it intend, to solicit the business of anyone or to refer anyone to an attorney or other professional. NLR does not answer legal questions nor will we refer you to an attorney or other professional if you request such information from us.

Under certain state laws the following statements may be required on this website and we have included them in order to be in full compliance with these rules. The choice of a lawyer or other professional is an important decision and should not be based solely upon advertisements. Attorney Advertising Notice: Prior results do not guarantee a similar outcome. Statement in compliance with Texas Rules of Professional Conduct. Unless otherwise noted, attorneys are not certified by the Texas Board of Legal Specialization, nor can NLR attest to the accuracy of any notation of Legal Specialization or other Professional Credentials.

The National Law Review - National Law Forum LLC 4700 Gilbert Ave. Suite 47 #230 Western Springs, IL 60558
Telephone (708) 357-3317 If you would like to contact us via email please [click here](#).

Copyright ©2019 National Law Forum, LLC