

Spiked!
Connecticut Law Tribune
Monday, April 27, 2009
Copyright 2009, ALM Properties, Inc.

Printed for dmcguire@acluct.org

Spiked!

College Faces Title IX Suit After Elimination Of Volleyball Team

By DOUGLAS S. MALAN

Robin Lamott Sparks was concerned about the future of women's volleyball at Quinnipiac University in the summer of 2007.

She says she learned that the university considered cutting the sport in 2006 but decided against it because doing so would violate federal sex discrimination laws. Sparks received assurances from university officials that Quinnipiac was dedicated to maintaining the program.

Nearly two years later, Quinnipiac has announced plans to cut its volleyball program due to budget concerns, and Sparks will be out of a job by the end of June.

Now she and some of her players are fighting for their sport with a lawsuit alleging violations of Title IX related to athletic opportunities. The law is part of the Education Amendments of 1972 and prohibits sex discrimination in educational programs and activities.

In Connecticut, official complaints and lawsuits alleging sports-related Title IX violations are rare. Western New England College School of Law professor Erin Buzuvis, who publishes a blog about Title IX, said she's not aware of any ongoing litigation in Connecticut involving allegations of sports-related Title IX violations.

"Decisions to cut teams are rampant these days due to the economy," Buzuvis said, but "it's too early to know if this particular point in time is worse than others," and therefore difficult to predict if more complaints and lawsuits could arise.

The American Civil Liberties Union of Connecticut filed the case on behalf of the volleyball team. Other plaintiffs' attorneys include Alex Hernandez and Jonathan Orleans from Pullman & Comley. They referred all questions to the ACLU.

"As far as this office goes, I don't know of a case [prior to Quinnipiac] where we've been involved in Title IX litigation," said ACLU attorney Patrick Doyle.

Title IX compliance means schools and colleges must meet at least one standard of a three-prong test. They must offer participation opportunities for men and women proportionate to their enrollment figures. They must show a history and continuing practice of program expansion for the under-represented sex. Or they must show accommodation to the athletic interests of that sex.

Schools also must meet other provisions, such as providing equal facilities and equity in scheduling of contests and travel arrangements. A large majority of the time, women are the under-represented sex.

Athletic Opportunities

Sparks, four of her current players and the mother of a high school recruit from Ohio claim in their class-action lawsuit that Quinnipiac "discriminates on the basis of sex by...providing male students with a greater opportunity to participate in varsity intercollegiate athletics than it provides to female students."

Along with cutting women's volleyball, Quinnipiac eliminated the men's golf and track programs.

Andrew Schneider, of the ACLU's Connecticut office, said Quinnipiac "was a school already out of compliance based on their reports to the U.S. Department of Education before they cut volleyball." He argues that women, who compose 62 percent of the student population, have only 50 percent of the athletic opportunities.

In a letter to opposing counsel, Quinnipiac counters that the school is in compliance because, after cutting the three programs, it elevated cheerleading to a varsity sport. Cheerleading now accounts for 40 athletic opportunities, and the ACLU ignored that fact, according to the letter's author, attorney Janet P. Judge, of Sports Law Associates LLC in Cumberland, Maine. Judge did not return telephone calls for comment.

The ACLU will challenge in court Quinnipiac's claim that it provides 85 opportunities for women in cross country, indoor and outdoor track. The plaintiffs say the same athletes are being counted multiple times for those sports.

Buzuvis, the Western New England professor, said the school is correct in counting opportunities, not athletes, because the National Collegiate Athletic Association (NCAA) considers each of the sports a separate opportunity.

Buzuvis says the bigger question is the elevation of cheerleading to a varsity sport.

Only two other universities—Maryland and Oregon—have varsity cheerleading programs, Buzuvis said. And though there are now cheerleading competitions, and participants spend hours and hours practicing difficult athletic moves, the NCAA does not sanction cheerleading as a sport. "That's going to be exciting," Buzuvis said. "We don't have a judicial decision for that."

Not Many Complaints

Title IX complaints in Connecticut are filed either with the state's Department of Education or the Boston regional office of the U.S. Department of Education's Office of Civil Rights (OCR). The state handles only complaints concerning students in grades K-12; the OCR takes on any complaint, but it must be filed within 180 days of the alleged violation. Lawsuits usually are filed after an OCR complaint.

Since 1999, the OCR has received 13 Title IX complaints from Connecticut at both the secondary and collegiate levels. Only three of those cases involved athletics and neither involved a college.

Nationally, the OCR has received between 4,000 and 6,000 complaints per year since 1997, and approximately 1 percent of those involve sports-related allegations.

Most recently in Connecticut, in 2006 the parent of a high school swimmer in Darien filed a complaint with OCR alleging proportionality violations and inequity in scheduling opportunities; however, the OCR found that the high school was compliant with Title IX.

William Howe, the state's Title IX coordinator, said most of the complaints he receives on the K-12 level, which amount to about two per month, involve use of facilities.

In the Terryville section of Plymouth, for example, parents complained because a new baseball diamond was constructed for the boys' team while the softball field for girls was uneven and filled with divots. After a discussion with the school, the softball field was renovated.

Working out a resolution without a lawsuit is "a common occurrence," said Howe. "It forces the town to spend money, which they don't like to do. Usually things get resolved without it becoming a huge prolonged issue."

On the college level, some universities take an active role in complying with Title IX. Each university is responsible for its own compliance, and many have someone serving as compliance officer.

Central Connecticut State University surveys its incoming and current students to find out what sports they would like to participate in and whether they feel their interests are being met. There's also a focus on equality in facilities, travel arrangements and scheduling. "On one hand, there haven't been any issues and none are on the horizon, but there's daily conversation about how we stay compliant," said Mark McLaughlin, a spokesman for the university.

The university has been recognized for its efforts, ranking 12th in gender equity earlier this decade by U.S. News and World Report.

Court Rulings

But many colleges are not making strides, a situation that often goes unnoticed unless a complaint or lawsuit is filed, said Nancy Hogshead-Makar, a former Olympic swimmer who is legal advisor for the national Women's Sports Foundation. And that doesn't happen as often as it probably could.

"It's difficult for young people to sue their school," she said, noting that students rely on colleges for a sense of community, not to mention letters of recommendations.

It's also difficult to overcome institutional beliefs. "There's a thinking in most athletic departments that what girls are doing isn't as important," said Hogshead-Makar. "It's just unfair to expect girls to bear the brunt of the budget cuts when they're already in an anorexic position."

Several federal courts around the country have determined that cutting a women's team automatically disqualifies a school from meeting the expansion and accommodation prongs of the Title IX test. That leaves schools needing to prove that they have a proportional number of athletic opportunities for women in the student body.

Most recently, in January 2008, a federal court judge in Pennsylvania denied a motion to re-open a Title IX lawsuit against Slippery Rock University, which planned to cut two women's teams and six men's teams. The judge determined that Slippery Rock had the right to cut the teams because opportunities for women and men mirror the student population.

Sometimes schools prevail based on finances. Last August, the Fourth Circuit Court of Appeals sided with James Madison University in its decision to cut seven men's and three women's teams. The court denied a request for a preliminary injunction against the cuts because it reasoned, in part, that the affected athletes could choose to transfer to another school to continue their athletic careers. The greater harm, the court stated, was that JMU would be forced to fund 10 teams that it claimed it could not afford.

In the Quinnipiac case, the plaintiffs also are seeking a preliminary injunction that prohibits the school from eliminating any women's programs. A hearing on the injunction is scheduled for May 11. •