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December 2009

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Title IX and Gender Gaps in Athletics

Ollier v. Sweetwater Union High Sch. Dist., 604 F. Supp. 2d 1264 (S.D. Cal. 2009).

The United States District Court for the Southern District of California has ruled that a local school district violated Title IX by failing to provide female students with equal opportunities to participate in interscholastic athletics. Litigation in this case ensued after a group of female students sued the district under Title IX alleging that the district discriminated against female athletes. In particular, the female students claimed that the district violated Title IX by limiting female participation in sports programs and by discouraging interested female students from participating in extracurricular athletics.

The Court began its analysis of the case by examining whether the district had complied with the proportionally requirements of Title IX. The law requires that participation levels for male and female athletes must be substantially proportionate to their respective enrollment numbers. The female students, however, were able to demonstrate disparities between female enrollment and female participation in athletic programs. In the previous year, females comprised 45.4 percent of the student population, but only 38.7 percent of athletic participants. The court determined that this 6.7 percent difference between enrollment and participation was not substantially proportional.

Although the Court determined that the raw numbers of enrollment and participation evidenced a violation of Title IX, the school district had the opportunity to argue that it was working towards compliance in order to avoid liability. The school district asserted that it had a history and practice of expanding the number of athletic programs available to female students. Specifically, it pointed to the fact that at the time of the litigation, the district had two more teams for females than males. The Court, however, was not persuaded by this argument. It indicated that the number of teams provided to female students does not evidence compliance; rather, the real issue is the number of females participating. The Court found that the number of females participating had not steadily increased, and as a result, the addition of female athletic programs did not demonstrate compliance by the district.

Finally, the school district argued that despite the disparities in participation levels, the interests of female students were fully and effectively accommodated. The female students, however, were able to show that female students at the school had participated in field hockey in the past, but the district had eliminated the program despite their interest in participating. Because the school district failed to show either that the participation figures were proportionate, that it had a history and continuing practice of program expansion in favor of the underrepresented gender, or that it had effectively accommodated the

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Title IX and Gender Gaps in Athletics

interests of the female student population, the court determined that the district had violated Title IX.

How this impacts your district:

Title XI of the Education Amendments of 1972 prohibits gender discrimination in all federally-assisted educational programs. The law provides that "No 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 in receiving federal financial assistance." Significantly, Title IX applies to all operations and programs of a school which receive federal funds, not just those programs which benefit directly from federal assistance.

Perhaps the most common source of litigation involving Title IX sex discrimination in public schools involves participation in athletic programs. In general, Title IX requires schools to provide equal opportunities in athletic programs for both boys and girls. In order to comply with this aspect of the law, school districts must ensure that participation levels for male and female athletes are substantially proportionate to their respective enrollment numbers. If members of one sex have been underrepresented, the district can show compliance by demonstrating a history and continuing practice of expanding its athletic programs to respond to the interests of the underrepresented gender. If the school is unable to show such a continuing practice, it may still comply with Title IX if it can demonstrate that the interests of the underrepresented gender have been fully and effectively accommodated by the present program.

Districts must recognize when a disparity in the rate of participation in athletics between females and males exists, and must take steps to rectify the disparity. Imbalanced participation levels may indicate that a district is not in compliance with Title IX. A district that fails to make efforts to comply with Title IX will risk losing federal funding.

Public Comments at Board Meetings

Lowery v. Jefferson County Board of Education,
No. 07-6324 (6th Cir. 2009).

The U.S. Court of Appeals for the Sixth Circuit, in Cincinnati, recently issued a unanimous ruling finding that that a school board's policy and actions limiting repetitive discourse at public meetings did not violate free-speech rights. The case originated in Jefferson County, Tennessee, when the school district was sued under the First Amendment by parents who were barred from addressing the board about a dispute involving their sons who were kicked off the school football team following a dispute with their coach. After the students were kicked off the team, the parents requested time during the board meeting's period for public speakers to address a "football" issue. A lawyer representing the parents spoke at this board meeting, in which he criticized several school officials and threatened to sue the school district. One of the parents then sought permission in advance to speak about "football" at the next school board meeting. The parent was denied, however, when the school board chairman determined that the speech would be repetitive and potentially harassing, both in violation of the board's speaking policy. The families then sued in federal district court where a jury ruled in favor of the school district and forced the families to pay the district's legal fees.

On appeal, the Sixth Circuit unanimously ruled that the board did not violate the parents' free-speech rights. The Court determined that the board's policy was content-neutral and served important governmental interests. The Court did, however, express concerns over the district's argument that the speech was harassing. The Court noted that the district could not exclude speech merely because it criticizes district officials. Despite this concern, the Court determined that the Board could legitimately exclude repetitive speech at its meetings, which was the guiding factor in the district's decision to deny the parent's request in this case. Consequently, the Sixth Circuit upheld the District Court's ruling in favor of the school district; however, it reversed the order requiring the parents to pay the district's legal fees because the

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Public Comments at Board Meetings

claims were not frivolous.

How this impacts your district:

Ohio's Sunshine Law mandates that boards of education must open their meetings to the public, but there is no inherent right to speak and be heard at such meetings. Ohio Revised Code section 3313.20 provides a board of education with the legal authority to adopt rules and regulations to allow members of the public to actively participate in board meetings. The rules and regulations, however, must conform to constitutionally protected rights. Therefore, if a board of education adopts a policy permitting public comments at its meetings, the comments are protected by the First Amendment. Notwithstanding this, a board of education may place reasonable time, place, and manner restrictions on the speech in order to promote the efficiency of the meeting so long as the restrictions are applied evenly to all individuals and the restrictions do not target any particular viewpoint. It is essential that public speech at school board meetings not be restricted on the basis of the particular opinion or ideas expressed, as such restrictions would constitute content regulation. Restricting speech on the basis of its content is generally forbidden as it allows public officials to arbitrarily restrict opposing viewpoints and other controversial speech. On the other hand, the board may adopt rules which require prior notification of the board, that establish time limitations, or which allow the board to terminate speech which is profane, abusive, inflammatory, disruptive or repetitive. These categories of restrictions balance the interests of the speakers and audience in creating an environment of open communication with the interest of the board in conducting its meetings in an orderly and efficient manner.

Student Searches and the Duty to Report Child Abuse

S.L. by Lakey v. Seymour R-2 Sch. Dist., 08-3105-CV-S-ODS (W.D. Mo. 2009).

The United States District Court for the Western District of Missouri recently rejected a parent's claim that school officials violated her third-grader's Fourth Amendment right to be free from unreasonable searches. The search at issue in this case involved a third-grade student who was diagnosed with cerebral palsy. A paraprofessional, who assisted the student on a full-time basis, noticed a bruise on the student when the student was partially unclothed in the restroom. The paraprofessional questioned the student about the bruise and the child indicated that her father had spanked her the previous night. The paraprofessional reported this to the child's teacher, who then referred the matter to the school counselor.

In the counselor's office, the student was asked to remove clothing in order to reveal the bruise. After the counselor consulted with the principal, it was determined that it would be necessary to report the evidence of child abuse to family services. In anticipation of reporting the evidence to family services, the principal directed the paraprofessional to photograph the bruise in order to preserve the evidence of alleged abuse and to avoid further embarrassing the child from disrobing in front of additional people. The parents of the child subsequently sued the school district and the individual employees involved, arguing that the school officials violated the Fourth Amendment when they asked the student to partially disrobe in front of the counselor and by taking photographs of the mark.

The District Court ruled in favor of the school district. It stated that the legality of a student search depends on the reasonableness of the search considering all of the circumstances. Given the circumstances at hand, the Court determined that the first search of the student, conducted in front of the school counselor, was justified due to the important interests of determining whether the district should report a case of potential child abuse with family services. With respect to the second search, where the student was again asked to disrobe in order to photograph the bruise, the Court determined that there was an important interest in preserving the evidence and to prevent subjecting the child to additional searches. Because these actions were reasonable under the circumstances, the court dismissed the lawsuit.

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Student Searches and the Duty to Report Child Abuse

How this impacts your district:

Student searches are governed by a "reasonableness" standard. Generally, courts must determine whether legitimate governmental interests justify intruding on the student's privacy by conducting a search. When determining whether a search is reasonable, a court will examine whether a search was justified at its inception. In other words, reasonable grounds must exist for suspecting that the search would yield evidence of a violation of law or school policy. If a search is justified at its inception, the courts will then examine whether the scope of the search was reasonably related to the circumstances surrounding the search.

Strip-searches of students are particularly disfavored by courts, and as a result, school officials must be extra cautious when considering whether a strip-search is reasonable. Generally, a strip-search will only be reasonable when the district suspects that the student is hiding weapons or other dangerous contraband. School districts must also exercise caution in the method of conducting a strip-search. The strip-search must not be conducted in a manner as to be excessively intrusive in light of the age and sex of the student and the nature of the violation. Furthermore, the search should always be conducted by a person of the same sex as the student being searched.

In the case above, the school officials acted reasonably when confronted with evidence of potential abuse. The government clearly has a legitimate interest in reporting potential cases of child abuse to the proper authorities. If your district is confronted with a potential case of child abuse, school officials must be sure to respond reasonably and in the best interests of the child.

Settlement Aims to Improve Special Education in Ohio

In 1991, a class-action lawsuit was filed against the State of Ohio by eight students with disabilities and their parents. At the root of the lawsuit, was what parents of special needs students found to be an overly complex special education system. Proponents of special education reform argued that the special education structure caused disparities throughout the state in the level of services available in the school districts, which forced parents to "comparison-shop" for schools with adequate services.

In October, United States District Court Judge John D. Holschuh approved a partial settlement agreement bringing the eighteen-year lawsuit to a close. The settlement agreement was designed to end the disparities in services for special education students across the state, but has left unresolved whether the state is correctly funding special education. The settlement purports to impose a more transparent special education system aimed at ensuring that special needs students receive appropriate educational services.

How this impacts your district:

As a result of the settlement, the Ohio Department of Education will play a larger role in regulating special education throughout the state. School districts should be aware of ODE's new responsibilities and recognize the department's role in regulating school district services to special education students. For instance, the settlement agreement indicates that ODE will be responsible for ensuring that districts comply with the special education requirements. Among other things, ODE will hold open meetings at which parents can present concerns; conduct more thorough and open investigations of complaints about services, due-process hearings, and the use of restraints and seclusions; and issue findings of their investigations within sixty days. The department will also provide information on special education issues to parents. For example, ODE will notify parents when a school district requests a waiver because it cannot meet requirements for class size, it will note the range of students' ages in the classroom and the ratio of staffers to students, and it will provide parents with more information about filing a complaint with the state. ODE will then post on its website how well school districts are meeting special education requirements. If a school district fails to meet Federal or State standards for special education, it will have one year to correct any deficiencies. In addition to recognizing ODE's increased role in monitoring special education throughout the State, districts should review their special education system and, if necessary, develop a strategy to work towards compliance with Federal and State laws.

Education Law Speeches/Seminars

Ennis, Roberts & Fischer regularly conducts seminars concerning education law topics of interest to school administrators and staff.
Popular topics covered include:

Cyber law
School sports law
IDEA and Special Education Issues
HB 190 and Professional Misconduct

To schedule a speech or seminar for your district, contact us today!

ENNIS, ROBERTS, & FISCHER WOULD LIKE TO WISH EVERYONE A GREAT HOLIDAY SEASON AND A HAPPY NEW YEARS!

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