Biediger et al v. Quinnipiac Univ Doc. 25 Att. 1

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

STEPHANIE BIEDIGER, KAYLA LAWLER ERIN OVERDEVEST, and KRISTEN CORINALDESI, individually and on behalf of those similarly situated; LESLEY RIKER, on behalf of her minor daughter, L.R., individually and on behalf of those similarly situated; and ROBIN LAMOTT SPARKS, individually,	:	**Civil Action No. 09 CV 621 (SRU)**
PLAINTIFFS,	:	
v.	:	
QUINNIPIAC UNIVERSITY,	:	
DEFENDANT.	:	**MAY 5, 2009**

DEFENDANT'S MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS COMPLAINT BY PLAINTIFFS OVERDEVEST AND SPARKS

Defendant, Quinnipiac University (hereinafter "Quinnipiac" or the "Defendant'), hereby respectfully submits this Memorandum of Law in Support of its Motion to Dismiss that portion of the Complaint by Plaintiffs Erin Overdevest and Robin Lamott Sparks (hereinafter "Coach Sparks"), pursuant to Fed. R. Civ. Proc. 12(b)(6). Specifically, Defendant respectfully requests that the claims asserted against it by these Plaintiffs be dismissed as these Plaintiffs lack standing. Defendant reserves the right to file additional motions to dismiss as to other Plaintiffs or on other grounds.

I. PRELIMINARY STATEMENT

This action was commenced by Plaintiffs, the majority of whom are current or incoming students at Quinnipiac University who are likewise members or potential members of the volleyball team, as well as Coach Sparks. Plaintiffs allege that they will be denied an equal

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opportunity to participate in varsity intercollegiate athletics at Quinnipiac as Quinnipiac eliminated the volleyball team for the upcoming 2009-2010 academic year. See Complaint ¶53. Coach Sparks specifically alleges that she was discriminated against on the basis of the "gender of her students" in violation of Title IX when Quinnipiac eliminated the women's volleyball team; and provided her notice that it would not renew her contract for the upcoming academic year.

It is well settled that, as a threshold matter, a plaintiff must assert sufficient facts on which to establish she has standing to sustain claims against any defendant--meaning that plaintiff allege actual injury; *i.e,.* an invasion of a legally protected interest. Moreover, to establish standing when seeking an injunction or declaratory relief, as Plaintiffs seek here, an individual plaintiff must also assert she will suffer an injury to a legally protected interest in the future.

Plaintiff Erin Overdevest, by her own allegations in the Complaint, is currently a senior at Quinnipiac. Consequently, it is irrefutable that she lacks standing to bring the type of Title IX claim she has brought here. First, Ms. Overdevest concedes in the Complaint that she participated as a member of the volleyball team for the 2008-2009 academic year, and further concedes that the cuts to the volleyball program will take effect during the 2009-2010 academic year. See Complaint at ¶¶13 and 53. Second, the Complaint is devoid of any allegations of harm concerning the 2008-2009 academic year. Indeed, the Complaint is devoid of any allegations that Ms. Overdevest's purported Title IX rights were violated in any prior years. In short, Plaintiff Overdevest did not suffer any injury by her own allegations; cannot establish future injury as she is graduating this year, and thus, in short, lacks standing to bring her Title IX claim now.

Likewise, Coach Sparks lacks judicially recognized standing to maintain her Title IX based claims. First, it is clear that Coach Sparks' sole discrimination claim arises from the alleged violation of the rights of her students. Riding the coattails of her students' potential claims is legally insufficient, as a matter of law, to maintain her own Title IX claim. Moreover, to the extent Coach Sparks is asserting that her contract is not being renewed, and her position as coach is being eliminated based upon the gender ***of her students***, such a claim is actually a claim of employment discrimination preempted by Title VII. Finally, Coach Sparks has not asserted any other viable claim under Title IX, as she alleges that her contract is not being renewed because of the elimination of the volleyball team. Accordingly, Coach Sparks' claims must also be dismissed due to lack of standing to prosecute the claims of her students.

II. ARGUMENT

A. The Standard For Motion to Dismiss

When considering a motion to dismiss under 12(b)(6), the Court accepts as true all factual allegations in the complaint and draws inferences from these allegations in the light most favorable to the plaintiff. See Scheuer v. Rhodes, 416 U.S. 232, 236 (1974). "The issue on a motion to dismiss is not whether the plaintiff will prevail, but whether the plaintiff is entitled to offer evidence to support his or her claims." United States v. Yale New Haven Hosp., 727 F.Supp. 784, 786 (D.Conn.1990). Thus, a motion to dismiss under 12(b)(6) should not be granted "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Sheppard v. Beerman, 18 F.3d 147, 150 (2d Cir.1994) (citations and internal quotations omitted).

B. Erin Overdevest and Coach Sparks Lack Standing to Assert Title IX Claims

As a threshold matter, it bears repeating that all plaintiffs must have standing to assert stated causes of action. "It is by now well settled that 'the irreducible constitutional minimum of standing contains three elements. First, the plaintiff must have suffered an 'injury in fact'- an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical. Second, there must be a causal connection between the injury and the conduct complained of ... Third, it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." United States v. Hays, 515 U.S. 737, 742-43, 115 S.Ct. 2431, 2435 (1995) (quoting Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61, 112 S.Ct. 2130 (1992) (citations omitted). "A plaintiff seeking injunctive or declaratory relief cannot rely on past injury to satisfy the injury requirement but must show a likelihood that he or she will be injured in the future." Deshawn E. ex rel. Charlotte E. v. Safir, 156 F.3d 340, 344 (2d Cir.1998). As set forth herein, Plaintiffs Erin Overdevest and Coach Sparks cannot satisfy this burden.

(i) Erin Overdevest

Ms. Overdevest does not have standing as she did not suffer an injury in fact. It is undisputed that the 2008-2009 volleyball season has concluded and the regularly scheduled practice for this season has also ended as per NCAA guidelines. Simply stated, Ms. Overdevest cannot establish that she was denied an equal opportunity to participate during the 2008-2009 season, nor does she even make such allegations. In other words, nowhere in the Complaint does Ms. Overdevest claim that she was denied the opportunity to participate during the 2008-2009 season, nor does make any claim that her purported Title IX rights were violated in **any** prior academic years. Rather, her sole factual basis for the Title IX claim is that the volleyball

program has been cut prospectively for the 2009-2010 academic year. See Complaint at ¶53. Thus, as Ms. Overdevest does not assert past wrongs, and since she is a senior who therefore cannot claim future injury, see Complaint at ¶53, her claims must be dismissed.

Courts addressing Title IX claims consistently hold that where the season has been completed and the student has graduated, that student lacks standing to bring suit under Title IX with respect to an upcoming season. See Cook v. Colgate University, 992 F.2d 17, 19 (2d Cir. 1993) ("We agree with Colgate that the end of the ice hockey season and the graduation of the last of the plaintiffs render this action moot[1]. None of the plaintiffs can benefit from an order requiring equal athletic opportunities for women ice hockey players."). See also Gomes v. Rhode Island Interscholastic League, 604 F.2d 733, 736 (1st Cir.1979); McFarlin v. Newport Special Sch. Dist., 980 F.2d 1208, 1210-11 (8th Cir.1992); Alexander v. Yale University; 631 F.2d 178, 184 (2d Cir. 1980), all cited by Second Circuit in Cook. Accordingly, Ms. Overdevest does not have standing and all claims asserted by her must be dismissed.

(ii) Coach Sparks

As emphasized, Coach Sparks' claims must also be dismissed, as she lacks standing to assert the rights of her students. "Ordinarily, one may not claim standing in this Court to vindicate the constitutional rights of some third party." Golden Hill Paugussett Tribe of Indians v. Weicker, 39 F.3d 51, 58 (2d Cir.1994). A third party may assert another's rights only in **limited circumstances**, upon a showing of three factors: "(1) the third party suffered an injury in fact, (2) the party asserting the right has a 'close' relationship with the person who possesses the

[1] It is well settled that the mootness doctrine is based upon the same principles as standing and the doctrines of mootness and standing are essentially two sides of the same coin. As noted by the 2d Circuit "litigants are required to demonstrate a 'personal stake' or 'legally cognizable interest in the outcome of their case. While the standing doctrine evaluates this personal stake at

right, and (3) there is a hindrance to the possessor's ability to protect his own interests." Kowalski v. Tesmer, 543 U.S. 125, 129-130 (2004).

While Coach Sparks may attempt to characterize her claim as one of discrimination arising under Title IX, it is clear that she is simply trying to assert the purported rights of her students, something she cannot do. Indeed, Coach Sparks seeks to have Quinnipiac reinstate the volleyball team, something that could only be accomplished by her students pursuant to Title IX, and clearly hopes that such relief will necessarily compel Quinnipiac to renew her contract. See Complaint at ¶85. In any event, Coach Sparks cannot establish that "there is a hindrance" for the student athletes in protecting their own interests, as the student athletes themselves are plaintiffs, and thus fully capable of pursuing these claims without Coach Sparks as a plaintiff. See Moe v. University of North Dakota, 1999 WL 33283358 (D.N.D. May 7, 1999) (holding that male coach did not have standing to assert the rights of the student athletes whom he coached).

To the extent that Coach Sparks is attempting to assert that she was individually discriminated against on the basis of the "gender of her students", such claim, at best, is preempted by Title VII. It is well settled that Title VII provides a "carefully balanced remedial scheme" whereby employees may pursue private claims for employment discrimination. See Lakoski v. James, 66 F.3d 751, 754 (5th Cir. 1995). In order to do so, an employee must exhaust his/her administrative remedies. Id. If Coach Sparks could bring an employment discrimination action under Title IX, she would "bypass [] the remedial process of Title VII," Lakoski, 66 F.3d at 753, and the "very comprehensive, detailed and express provisions of Title VII could be completely avoided." Howard v. Bd. Of Educ., 893 F. Supp. 808, 815 (N.D. Ill. 1995). As aptly noted in a concurring opinion in Arceneaux v. Vanderbilt Univ., 25 Fed. Appx. 345, 349 (6th Cir.

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the outset of the litigation, the mootness doctrine ensures that the litigant's interest in the outcome continues throughout the life of the lawsuit." Cook, 992 F.2d at 19.

2001), "Congress did not intend for Title IX to provide the route for an end-run around Title VII for individuals claiming employment discrimination on the basis of gender." Arceneaux, 25 Fed. Appx. at 349. A clear majority of the courts that have considered the question have indeed held that Title VII actually preempts private claims for employment discrimination under Title IX. See e.g., Waid v. Merrill Area Pub. Schools., 91 F. 3d 857, 862 (7th Cir. 1996); Lakoski, 66 F.3d 751, 753; Arceneaux, 25 Fed. Appx. at 349; Glickstein v. Neshaminy School Dist., 1997 WL 660636, *15 (E.D.Pa. 1997) (" This Court agrees that Congress did not intend that private plaintiffs be able to circumvent the remedial process of Title VII and its state analogs merely by framing a complaint in terms of Title IX. This can only be prevented by barring private employment discrimination claims under Title IX to the extent that the same claims might be brought under Title VII."). Indeed, while the Second Circuit has not yet specifically addressed this issue, Chief Judge Chatigny o f this District recently held that a Title IX employment discrimination claim was preempted by Title VII. See Urie v. Yale University, 331 F.Supp.2d 94, 97 (D.Conn. 2004). Coach Sparks makes no other claims cognizable under Title IX in the Complaint.

Accordingly, it is respectfully submitted that this Court should dismiss Coach Spark's Title IX claim.

C. An Award of Fees to Defendant is Warranted

Last, Defendant respectfully contends it is entitled to an award of costs and attorney's fees incurred in connection with the filing of this motion. It is well settled that attorney's fees can be awarded to a prevailing defendant in a civil rights action, including Title IX, where the plaintiff's action was "frivolous, unreasonable, or groundless, or ... the plaintiff continued to litigate after it clearly became so." LeBlanc-Sternberg v. Fletcher, 143 F.3d 765, 769-770 (2d Cir.1998); see also 42 U.S.C. § 1988(b). Here, minimal research regarding Title IX claims

would have revealed the total lack of standing of these Plaintiffs to bring the claims they brought here. The Complaint on its face is devoid of any allegations of any past, present or future harm suffered by Ms. Overdevest. As such, Ms. Overdevest's claims are frivolous and groundless. Plaintiffs' attempt to dress up Coach Sparks' potential, yet weak, Title VII claim as a Title IX claim is further evidence that Plaintiffs knew at the outset that Coach Sparks did not have standing to bring a Title IX claim and yet brought that claim anyway disguised as something else. Consequently, Defendant was compelled to spend considerable time and resources to draft this Motion. Accordingly, the equities of this situation warrant an order that Defendant be reimbursed its costs and fees incurred. See Tornheim v. Eason, 175 Fed.Appx. 427, 429-430 (2d Cir. 2006) (upholding award of attorney's fees to defendant in frivolous civil rights action.)

III. CONCLUSION

For the foregoing reasons, Defendant respectfully requests that the Court dismiss all claims brought by Plaintiffs Erin Overdevest and Robin Sparks, together with such other and further relief as the Court deems just and proper. Furthermore, should the Court agree that an award of costs and/or fees is warranted, Defendant respectfully requests that this Court permit it to submit an Affidavit reflecting such fees and costs incurred.

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CERTIFICATE OF SERVICE

I hereby certify that on May 5, 2009 the foregoing Defendant's Memorandum of Law in Support of its Motion to Dismiss the Complaint was filed electronically, and notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing, and specifically to the following counsel of record:

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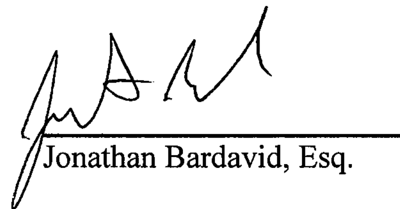

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