UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

STEPHANIE BIEDIGER, KAYLA LAWLER ERIN OVERDEVEST, and KRISTEN CORINALDESI, individually and on behalf of all those similarly situated; LESLEY RIKER on behalf of her minor daughter, L.R., individually and on behalf of all those similarly situated; and ROBIN LAMOTT SPARKS, individually,	)	CIVIL ACTION NO. 3:09-cv-00621-SRU
Plaintiffs,	)	
v.	)	
QUINNIPIAC UNIVERSITY,	)	
Defendant.	)	JULY 24, 2009

PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS COMPLAINT OF PLAINTIFF SPARKS

Plaintiffs submit this Memorandum of Law in opposition to Defendant Quinnipiac University's ("Quinnipiac" or "QU")) May 5, 2009 motion to dismiss the claims of Plaintiff Robin Lamott Sparks [Docket Entry Nos. 24 and 25, respectively "Def't Motion" and "Def't Memo"].

Quinnipiac moves to dismiss Coach Robin Sparks' claim on two grounds: (1) She lacks standing to assert the rights of her student-athletes; and (2) to the extent she asserts her own rights, her Title IX claim is preempted by Title VII. Defendant's arguments misapprehend – or misrepresent – the nature of Coach Sparks' claim. Coach Sparks does not attempt to vindicate the rights of the athletes whom she coaches, nor does she allege that she has been discriminated against on the basis of her sex. Rather, she alleges that her rights have been violated because of the sex of

her student-athletes. This is a cognizable claim under Title IX, and Defendant's motion to dismiss must therefore be denied.[1]

NATURE OF THE PROCEEDINGS

Plaintiffs in this action are student athletes, members of the varsity women's volleyball team at Defendant Quinnipiac, and their coach, Robin Lamott Sparks. (One plaintiff, Leslie Riker, sued on behalf of her minor daughter, L.R., who will be a member of the team this Fall.) When the University announced early in March, 2009 that it would eliminate the volleyball team, Plaintiffs brought suit, alleging that the University did not meet its obligations under Title IX of the Education Amendments of 1972, and would not be in compliance after the volleyball team was eliminated. Coach Sparks, who held her position pursuant to a one-year, renewable contract, alleged that her removal as coach would violate Title IX because the loss of her job was a direct consequence of discrimination based on the sex of her student-athletes. *See generally* Verified Class Action Complaint dated April 16, 2009 (Docket Entry No. 1).

Plaintiffs sought a preliminary injunction to restrain Quinnipiac from eliminating volleyball as a varsity sport preceding a trial on the merits. Before the hearing on Plaintiffs' motion for preliminary injunction, Defendant moved to dismiss Coach Sparks' claims. Defendant asserts that Coach Sparks lacks standing to maintain a Title IX claim, because "Coach Sparks' sole discrimination claim arises from the alleged violation of the rights of her students." Alternatively, Defendant characterizes Coach

[1] Defendant also sought dismissal of the claims of Plaintiff Erin Overdevest, but withdrew the motion as to her. See Stipulation regarding deadlines filed May 20, 2009 [Docket Entry No. 49] and Order approving Stipulation dated May 21, 2009 [Docket Entry No. 50].

Sparks' claim as a traditional employment discrimination case that, Defendant argues, is preempted by Title VII.

ARGUMENT

Defendant Quinnipiac claims that Plaintiff Sparks cannot sue the University under Title IX. The Supreme Court has stated that "Title IX created a private right of action for the victims of illegal discrimination . . . " *Cannon v. University of Chicago*, 441 U.S. 677, 703, 99 S.Ct. 1946, 60 L.Ed.2d 560 (1979). The Court has interpreted Title IX's prohibition on sex discrimination to protect "[e]mployees who directly participate in federal programs or who directly benefit from federal grants, loans or contracts." *North Haven Board of Education et al. v. Bell, Secretary of Education, et al.* 456 U.S. 512, 520, 102 S.Ct. 1912, 72 L.Ed.2d 299 (1982). Quinnipiac is an educational institution which receives federal funding. Ms. Sparks is employed by Quinnipiac as the women's volleyball coach. The Supreme Court's rulings in *Cannon*, *North Haven* and most recently *Jackson v. Birmingham Board of Education,* 544 U.S. 167, 125 S.Ct. 1497, 161 L.Ed.2d 361 (2005), all recognize a private right of action for employees of educational institutions, such as QU, which receive federal funds. Thus, as an employee of the Defendant, Coach Sparks has a private right of action under Title IX which, at present, has not been held to be preempted by Title VII. Defendant's motion, therefore, should be denied.

I. STANDING

Title IX of the Education Amendments of 1972 ("Title IX") provides, in relevant part, as follows.

> No person . . . shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance.

20 U.S.C. § 1681(a). Defendant argues that Coach Sparks lacks standing because she is "riding the coattails of her students' potential claims." Def't Memo at 2. But Coach Sparks is not asserting her student-athletes' rights. She is asserting her own right, expressly protected under Title IX, to be free from discrimination "on the basis of [the] sex" of her student-athletes.

A. THERE IS A PRIVATE RIGHT OF ACTION UNDER TITLE IX FOR INTENTIONAL SEX DISCRIMINATION.

The scope of Title IX's injunction against sex discrimination is broad. *Jackson*, 544 U.S. at 175 (internal citation omitted). The statute protects all persons from sex discrimination in federally-funded educational programs, including students, faculty, and employees of educational institutions receiving federal assistance.

There is no question that persons injured by violations of Title IX have the right to sue. "Title IX implies a private right of action to enforce its prohibition on intentional sex discrimination." *Jackson v. Birmingham Board of Education*, 544 U.S. 167, 173 (2005) (citing *Cannon v. Univ. of Chicago*, 441 U.S. 677, 690-693 (1979)). The statute not only authorizes injunctive relief, "[i]t [also] authorizes private parties to seek monetary damages for intentional violations of Title IX." *Jackson*, 544 U.S. at 173 (citing *Franklin v. Gwinnett County Public Schools*, 503 U.S. 60 (1992)).

B. TITLE IX PROHIBITS SEX DISCRIMINATION WHICH HARMS UNIVERSITY EMPLOYEES.

The Supreme Court has defined the contours of Title IX's private right of action in several cases since it decided *Cannon* in 1979. *See Jackson*, 544 U.S. at 173 (citing

Davis v. Monroe County Bd. of Educ., 526 U.S. 629, 642 (1999); *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 290-291 (1998); *Franklin v. Gwinnett County Pub. Schs.*, 503 U.S. 60 (1992). In those cases, the Court has "relied on the text of Title IX, which . . . broadly prohibits a funding recipient from subjecting *any* person to 'discrimination' 'on the basis of sex.'" *Jackson*, 544 U.S. at 173 (quoting 20 U.S.C. § 1681) (emphasis added).

In *North Haven Board of Education v. Bell*, 456 U.S. 512 (1982), the Court relied on the language and legislative history of Title IX to uphold employment regulations issued by the Department of Health, Education, and Welfare. While *North Haven* did not involve a claim by an individual, the Court held that employees are included among the class of "person[s]" protected by Title IX. The Court observed that

> [Title IX's] broad directive that 'no person' may be discriminated against on the basis of gender appears, on its face, to include employees as well as students. Under that provision, employees, like other 'persons', may not be 'excluded from participation in,' 'denied the benefits of,' or 'subjected to discrimination under' educational programs receiving federal financial support. ....
>
> Because [Title IX] neither expressly nor impliedly excludes employees from its reach, we should interpret the provision as covering and protecting these 'persons' unless other considerations counsel to the contrary. After all, Congress could easily have substituted 'student' or 'beneficiary' for the word 'person' if it had wished to restrict the scope of [Title IX].

North Haven, 456 U.S. at 520-21. The Court also reviewed Title IX's legislative history at some length, concluding that "Congress intended that [Title IX] prohibit gender discrimination in employment." *Id.* at 522-28. Title IX's broad injunction against sex

discrimination in federally-funded educational institutions, therefore, protects university employees from discrimination on the basis of sex.

More recently, in *Jackson,* the male coach of a girls' high school basketball team was fired after complaining of sex discrimination in the school's athletic program. He brought a retaliation claim asserting that he had been discriminated against on the basis of the sex of his female student-athletes. 544 U.S. at 171. The Supreme Court held that Title IX's implied private right of action encompasses employee retaliation claims, even though the text of Title IX does not specifically mention retaliation. *Id.* at 174, 178. The Court relied on, *inter alia*, its previous "repeated holdings construing 'discrimination' broadly." *Id.* at 174.[2]

The Court in *Jackson* reasoned that "[r]etaliation against a person because that person has complained of sex discrimination is another form of intentional sex discrimination encompassed by Title IX's private cause of action." *Id.* at 173. Like the retaliatory termination of a coach who has complained of sex discrimination in a school athletic program, the termination of Coach Sparks because she coaches a women's team targeted for discriminatory elimination is an intentional discriminatory act. Her termination thus "constitutes intentional 'discrimination' 'on the basis of sex,' in violation of Title IX." *Id.* at 174.

Both before and since *Jackson* was decided, a number of courts have permitted straightforward (non-retaliation) claims for sex discrimination in employment under Title IX. In *Gupta v. Albright College*, 2006 WL 162977 (E.D. Pa. Jan. 19, 2006), the court

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[2] As the Court previously stated in *North Haven Board of Education v. Bell*, 456 U.S. 512, 521 (1982): "'Discrimination' is a term that covers a wide range of intentional unequal treatment; by using such a broad term, Congress gave the statute a broad reach."

upheld a professor's gender discrimination claim under Title IX for denial of tenure. The court concluded that "[t]he Supreme Court's rulings in *Cannon*, *Bell*, and *Jackson v. Birmingham* imply a private right of action for employees of educational institutions that receive federal funds." *Gupta*, 2006 WL 162977 at *3.

In *Morris v. Fordham*, 2004 WL 906248 (S.D.N.Y Apr. 28, 2004), a case even more closely analogous to the instant case, and decided before *Jackson*, a male coach employed by a federally-funded institution alleged, *inter alia*, that the University provided his women's basketball team with resources and opportunities inferior to those the University provided the men's basketball team. The court held that the coach had a private right of action under Title IX. *Id.* at *3. The court reasoned that "[t]he prohibition of discrimination 'on the basis of sex' is broad enough to encompass a prohibition of discrimination against plaintiff on the basis of the sex of the players whom he coached." *Id.* at *1. Thus, although the plaintiff was an employee of the institution, the district court nevertheless recognized his own right to sue under Title IX based upon sex discrimination towards his student athletes.

The *Morris* court, moreover, expressly rejected the same argument that is presently tendered by Defendant, namely that the employee coach's claim had to be brought under Title VII:

> We are also unpersuaded bv defendant's argument that dismissal of plaintiff's Title IX claim is required because the claim is premised not on plaintiff's gender, but on the gender of the students he coached. The prohibition of discrimination "on the basis of sex" is broad enough to encompass a prohibition of discrimination against plaintiff on the basis of the sex of the players whom he coached.

Id. at *3.

Defendant asserts that our Court of Appeals has not yet decided whether an employee of an educational institution that receives federal funds has a private right of action for employment discrimination under Title IX. Def't Memo at 7. But the Second Circuit has expressly recognized that "Title IX has been construed to prohibit gender discrimination against both students enrolled in federally supported educational programs and employees involved in such programs." *Murray v. N.Y. Univ. Coll. of Dentistry*, 57 F.3d 243, 248 (2nd Cir. 1995) (citing *North Haven Board of Education v. Bell*, 456 U.S. 512, 530 (1982)).

C. COACH SPARKS MAY ASSERT A CLAIM UNDER TITLE IX FOR DISCRIMINATION BASED ON THE SEX OF HER STUDENT-ATHLETES.

Like the plaintiff-coach in *Morris*, Coach Sparks may properly bring her own claim under Title IX. She is not asserting the rights of her student-athletes to be free of discrimination on the basis of sex. Rather, she is asserting her own right to be free form the adverse consequences of sex discrimination, namely, her firing as a result of the impermissible elimination of a women's varsity sports team. Like the plaintiff in *Jackson,* Coach Sparks has suffered the consequences of discrimination against her team.

Defendant relies in part on *Moe v. Univ. of N.D.*, 1999 WL 33283358 (D. N.D. May 7,1999), for the proposition that Coach Sparks has to meet the requirements of "third party" standing because she is asserting her student-athletes' rights and not her own. The plaintiff in *Moe* was a male wrestling coach whose team was eliminated after he offered a scholarship to a female wrestler. The court held that a coach did not have third party standing to assert a Title IX claim because the alleged discrimination was not

directed towards him. *Id.* at *3. The court reasoned that "to fall within Title IX's 'zone of interest,' a plaintiff's claim must allege discriminatory acts based on his/her own sex." *Id.* at *2. In *Jackson*, however, the Supreme Court foreclosed the reasoning of *Moe* and Defendant's present argument when it permitted an employee coach to bring a Title IX retaliation claim, even though he was not the subject of the discrimination.

Notwithstanding the fact that she is an employee of the Defendant, Coach Sparks is protected by Title IX. She is a victim of discrimination based on the sex of her student-athletes. Because Title IX simply prohibits discrimination "on the basis of sex," the *Jackson* Court reasoned that the discrimination does not have to be based on the complainant's *own* sex. In contrast, Title VII prohibits discrimination "against any individual . . . because of *such individual's* race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a) (emphasis added). The language of Title IX is thus broader than that of Title VII. A broad interpretation of Title IX's prohibition is consistent with Congress' intent to give the statute a broad reach. *Jackson,* 544 U.S. at 175.

Plaintiffs allege that elimination of the volleyball team constitutes illegal sex discrimination under Title IX. Coach Sparks will lose her job if Defendant is permitted to eliminate the team in violation of Title IX. Therefore, her removal as coach would constitute discrimination on the basis of sex. She asserts not her students' rights, but her own right to be free of such discrimination. Coach Sparks, therefore, may properly pursue a Title IX claim, and need not meet the requirements of "third party" standing.[3]

[3] Even assuming, *arguendo*, that this Court might find that employment discrimination claims are not within the scope of Title IX, this Court should find that Title IX encompasses claims like Coach Sparks, which are related to discrimination against students based on sex. A court that recently held that Title VII preempted a Title IX employment discrimination claim commented: *"Jackson* should not be read to expand private rights of action under Title IX to include claims of employment discrimination *which have*

II. COACH SPARK'S TITLE IX CLAIM IS NOT PREEMPTED BY TITLE VII.

Defendant also argues that "[t]o 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." Def't Memo at 6. But even if Coach Sparks' claim could be characterized as a Title VII "associational discrimination" claim, *see, e.g., Holcomb v. Iona Coll.*, 521 F.3d 130, 138-39 (2nd Cir. 2008) (holding that "an employer may violate Title VII if it takes action against an employee because of the employee's association with a person of another race"), her claim nonetheless is not preempted, because Title IX and Title VII overlap and supplement each other.

A. IN THE EMPLOYMENT CONTEXT, TITLE IX SUPPLEMENTS TITLE VII.

Defendant relies primarily on *Lakoski v. James*, 66 F.3d 751 (5th Cir. 1995), contending that permitting Coach Sparks to proceed under Title IX would allow her to avoid the administrative prerequisites to suit under Title VII. Def't Memo at 6. But the Supreme Court recently rejected an analogous contention in *CBOCS West, Inc. v. Humphries*, 128 S. Ct. 1951 (2008). In *CBOCS*, the Court held that 42 U.S.C. § 1981 encompasses claims for retaliation that could also be brought under Title VII, even though there is an overlap between Section 1981 and Title VII and "Title VII provides important administrative remedies and other benefits that § 1981 lacks." Id. at 1960-61.

Defendant asserts that "[a] clear majority of the courts that have considered the question [whether or not Title VII preempts Title IX] have indeed held that Title VII

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no connection to the rights of students. . . " *Vandiver v. Little Rock School District*, 2007 WL 2973463, *15 (E.D. Ark, Oct. 9, 2007) (emphasis added). The caveat suggests that the court would have permitted an employment discrimination claim under Title IX which *does* have a connection to the rights of students.

actually preempts private claims for employment discrimination under Title IX." Def't Memo at 7. In fact, several district courts both in this Circuit and elsewhere have held otherwise. *E.g., Gupta v. Albright College*, 2006 WL 162977, *3 (E.D. Pa. 2006); *Plaza-Torres v. Rey,* 376 F.Supp.2d 171, 180 (D.P.R. 2005) (recognizing "overlapping rights" under Title VII and Title IX); *Morris v. Fordham Univ.*, *supra*; *Mehus v. Emporia State Univ.*, 295 F. Supp. 2d 1258, 1272 (D. Kansas 2004) (permitting plaintiff's Title IX employment discrimination claim to proceed although plaintiff also asserted Title VII claims); *Bedard v. Roger Williams Univ.,* 989 F.Supp. 94 (D.R.I. 1997); *Ivan v. Kent State Univ.*, 92 F.3d 1185, 1996 WL 422496 *2 and n. 10 (6th Cir. 1996) (unpublished opinion) (Title VII does not preempt an individual's private remedy under Title IX) (expressly overruling *Wedding v. Univ. of Toledo*, 862 F. Supp. 201, 203 (N.D. Ohio 1994; *Arceneaux v. Vanderbilt Univ.*, 2001 WL 1671074, *1-2 (6th Cir. 2001) (recognizing holding of *Ivan v. Kent State Univ.*); *Henschke v. N.Y. Hosp.-Cornell Med. Ctr.*, 821 F. Supp. 166 (S.D.N.Y. 1993).[4]

Henschke is illustrative. The court in *Henschke* court rejected an argument that Title VII preempted the plaintiff from asserting an employment discrimination claim under Title IX. The court considered prior cases, including *Cannon* and *North Haven*, and concluded,

> [T]he legislative history of Title IX demonstrates an intent on the part of Congress to have Title IX serve as an additional protection against gender-based discrimination in educational programs receiving federal funding regardless of the availability of a remedy

[4] Defendants also rely on Judge Chatigny's decision in *Urie v. Yale University*, 331 F.Supp.2d 94 (2004), in which the court followed *Lakoski* and held a Title IX employment discrimination claim preempted by Title VII. Perhaps now, after the Supreme Court's decisions in *Jackson* and *CBOCS,* the court would decide *Urie* differently.

> under Title VII, and the Supreme Court and Second Circuit interpretations of the statute do not permit the contrary conclusion.

Id. at 172. Thus, the court found that the plaintiff employee had a "private right of action for employment discrimination . . . under Title IX separate and apart from Title VII and without regard to the availability of the Title VII remedy." *Id.* at 172.

CONCLUSION

Coach Sparks alleges that she has been discriminated against on the basis of the sex of the student athletes whom she coaches. She has standing to pursue this claim – which is her own claim, and not her students-athletes' – under Title IX. Because Title IX supplements Title VII, many courts have acknowledged that such claims are not preempted by Title VII. The Supreme Court's decision in *Jackson* makes it clear that the Court would not hold Coach Sparks' claim to be preempted.

For all of the foregoing reasons, Defendant's Motion to Dismiss Coach Sparks' claims should be denied.

Respectfully submitted,
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CERTIFICATION OF SERVICE

I hereby certify that on July 24, 2009, a copy of the foregoing *PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS COMPLAINT OF PLAINTIFF SPARKS* was filed electronically and served by mail on anyone unable to accept electronic filing. 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. Parties may access this filing through the Court's CM/ECF System.

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