



CAMPUS COUNSEL

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Federal Court Decides that Title IX Prohibits Sexual Orientation Discrimination

JANUARY 14, 2016

In a landmark ruling, a judge from the United States District Court for the Central District of California recently decided that Title IX's ban on sex discrimination includes a ban on discrimination based on a person's sexual orientation. Haley Videckis and Layana White, former members of the Pepperdine University women's basketball team, sued the university under Title IX alleging, among other things, that they faced discrimination and harassment from their head coach and other university personnel arising out of concerns over Ms. Videckis' and Mr. White's romantic relationship. Pepperdine University sought to dismiss the Title IX claims on the grounds that the statute does not protect against discrimination based on sexual orientation.

The Court denied Pepperdine University's motion. The Court noted that Title IX's ban on sex discrimination includes discrimination based on gender stereotypes. The Court ultimately decided that discrimination based on a person's sexual orientation is a form of discrimination based on gender stereotypes (i.e., the alleged discriminator's views about the proper roles of men and women and their relationships) and thus falls squarely within Title IX's ban on sex discrimination. The Court also found that the alleged actions of Pepperdine University fell within the prohibition on sex discrimination because the plaintiffs claimed they were treated differently because of their sex (i.e., they allegedly were harassed because they were women dating women, and they would not have faced the same behavior if they were men dating women).

Client Tip: *The District Court's decision may be appealed, and a ruling from the Ninth Circuit Court of Appeals should be closely monitored for its impact on Title IX jurisprudence. While many states, including Massachusetts, expressly ban sexual orientation discrimination in their general anti-discrimination statutes, applying that ban in the Title IX context could result in a wave of new federal claims and compliance obligations, and institutions should review and revise their policies and procedures as necessary in preparation.*