

CLIENT NEWS BRIEF

A Recent Federal Court Ruling Clarifies that Discrimination Claims Based on Sexual Orientation Are Covered Under Title IX as Sex Discrimination Claims

The United States District Court in *Videckis v. Pepperdine University*, (C.D. Cal, December 15, 2015) 2015 U.S. Dist. Lexis 167672, recently addressed the question of whether discrimination on the basis of sexual orientation is actionable under Title IX of the Education Amendments of 1972 (Title IX). In its decision, the court denounced any distinction prior courts have made between "sex discrimination" and "sexual orientation discrimination," and ruled that such a distinction is "illusory," "artificial" and "does not exist." The court held that sexual orientation discrimination is sexual harassment and thus covered under Title IX.

In *Videckis*, two female, student athletes, Layana White and Haley Videckis (jointly referred to as "Plaintiffs") filed suit against Pepperdine University, alleging that their basketball coach, Coach Ryan, and other staff members harassed and discriminated against them after concluding that Ms. White and Ms. Videckis were lesbians and were in a relationship. Specifically, Ms. White and Ms. Videckis claimed they were repeatedly interrogated by Coach Ryan and asked, among other things, how close they were to each other, whether they took vacations together, where they slept, whether they went on dates, and whether they would live together. Plaintiffs claimed they were also told by Coach Ryan that lesbianism was a big concern for him and for women's basketball, that it was a reason why teams lose, and that it would not be tolerated on the team.

Plaintiffs further alleged they were not cleared to play basketball because of Pepperdine University's discriminatory views. Ms. White's request that an appeal be filed with the NCAA to allow her to play basketball as a transfer student was ignored. Similarly, Ms. Videckis who had previously sustained a tailbone injury, was not cleared by the staff to play basketball even after she submitted her medical records, which verified she had no physical restrictions or limitations. Ms. White claimed the stress of discrimination caused her to suffer from severe depression and even attempt suicide.

Nevertheless, Pepperdine University requested that the court dismiss three of Plaintiffs' seven claims and argued that Title IX did not apply to claims based on sexual orientation. Plaintiffs argued that they had an actionable Title IX claim because Title IX covers sexual orientation discrimination, even if Title IX does not explicitly state so.

Title IX provides, in relevant part, that "[n]o person in the United States shall, on the basis of sex . . . be subjected to discrimination under any education program or activity receiving Federal financial assistance." (20 U.S.C. § 1681(a)) In interpreting Title IX, courts often look to Title VII of the Civil Rights Act of 1964 (Title VII) because the legislative history of Title IX "strongly suggests that Congress meant for similar substantive standards to apply under Title IX as had been developed under Title VII." (*Videckis*, 2015 U.S. Dist. Lexis 167672 at 14, citing *Emeldi v. Univ. of Oregon* (9th Cir. 2012) 698 F.3d 715, 724.) Title VII protects individuals against employment discrimination on the basis of race, color, national origin, sex, and religion. (Title VII, 42 U.S.C. § 2000e et. seq.)

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Michelle L. Cannon
Senior Counsel
Sacramento Office
mcannon@lozanosmith.com



Stephanie M. White
Associate
Walnut Creek Office
swhite@lozanosmith.com



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Prior court decisions have found that “sex” for purposes of Title IX and Title VII means “gender,” applies “in the biological sense,” and includes “discrimination based on gender stereotypes.” (*Videckis*, 2015 U.S. Dist. Lexis 167672 at 14 (9th Cir. 2001.))

Considering past precedent, including a recent ruling under Title VII by the [Equal Employment Opportunity Commission](#) (EEOC), the *Videckis* court denied Pepperdine University’s motion to dismiss Plaintiffs’ Title IX claims based on sexual orientation discrimination. The court ruled “that sexual orientation discrimination is not a category distinct from sex or gender discrimination.” (*Id.* at 23.) The court noted that “the “actual” sexual orientation of a plaintiff is irrelevant to a Title IX or Title VII claim because it is the biased mind of the alleged discriminator that is the focus of the analysis.” (*Id.* at 17.) The court went on to state:

Here, Plaintiffs allege that they were told that ‘lesbianism’ would not be tolerated on the team. If Plaintiffs had been males dating females, instead of females dating females, they would not have been subjected to the alleged different treatment. Plaintiffs have stated a straightforward claim of sex discrimination under Title IX. (*Id.* at 22.)

While *Videckis* is non-precedential since it is a trial court decision, it is significant because it is the first time a federal court in California has ruled that allegations of discrimination based on sexuality states a Title IX claim on the basis of sex or gender. This holding likely expands the ability of gay and lesbian plaintiffs to successfully bring forth discrimination claims based on sexual orientation alone in the Title IX context. Plaintiffs will no longer be limited to challenging sexual orientation discrimination under Title IX as “gender nonconformity” (i.e., on the basis of one’s appearance or mannerisms).

The law already prohibits discrimination based on sexual orientation. Now this prohibited form of discrimination may be actionable under Title IX as well. If you have any questions regarding this decision, please contact one of our [nine offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#), or download our [Client News Brief App](#).