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Sports Law HHPS 539

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Case Paper 2 – Discrimination

August 4, 2017

“...the main barriers to...gender equity no longer lie in people’s personal attitudes and relationships. Instead, structural impediments prevent people from acting on their egalitarian values...The gender revolution is not in a stall. It has hit a wall.” Stephanie Coontz, sociologist (2009). Under Title IX of the U.S. Department of Education, enforced by the Office for Civil Rights and the Title IX Amendments of 1972, no persons shall be discriminated against on the basis of sex in education programs or activities that receive federal assistance. This includes state and local educational agencies, which include approximately 16,500 local school districts, 7,000 post-secondary institutions, including charter schools, libraries, and museums (U.S. Department of Education, 2015). Between 1998 and 2012 there were 2928 new NCAA teams for women and of those teams, 1,962 (66 percent) were men and 966 (3 percent) were women. In 1998 there 188 women in an athletic director position, which is only 19 percent, but the number grew slightly to 215 in 2012, which is 20 percent (Coakley, 2015). Discrimination happens more than just with women and the representation of sports, but also equity barriers with the hiring of women in positions dominated by men dealing with sports. Years after Title IX became a law, men were looking to take over by the existing sports and their power and influence. During this process women lost their jobs to men as head coaches and administrative roles. Women coaches also felt pressure to hire men as assistants, which led to female athletes not seeing themselves in leadership positions and power positions going to men while women were undervalued (Coakley, 2015). Discrimination happens in all areas of sports and the business in sports. When you look at the attention women’s sports receives or the lack thereof, you see discrimination. Society is more likely to watch men play basketball than

women, on the collegiate and the professional level. The attention men's sports get compare to women televised. Women's sports receive only 4 percent of televised media according to some studies, they receive as low as 1 percent. If you look at the journalist who cover sports about 90 percent of them are men (Ottaway, 2016). There have been different cases that have shown the discrimination in the battle of men verse female, but is it truly a battle. Why do we need to battle about equality among genders and equality in sports and attention?

### **CASE DISCUSSION:**

In the case of *Roberts v Colorado State University*, on June 1, 1992 Colorado State University, in Fort Collins, CO, announced they were going to drop the baseball and softball programs from the school. Players from the softball team were seeking reinstatement and damages and stated the university violated the Title IX Amendment by dropping the team (*Roberts v. Colorado State University, 1993*). CSU felt that they were within their right as a university to drop the softball team because they also dropped the baseball team. The trial was not heard in district court until November 19<sup>th</sup> and continued on to the 24<sup>th</sup> of November. The plaintiff sought out to prove that by dismissing the softball team, that the percentage of female enrollment to women's representation in athletics were not equal and therefore violated Title IX. The university chose to disprove those claims and prove that the female athletic rate was equal to the enrollment rate and inconsistencies between the policy interpretation and the evaluation of the investigators manual deemed it necessary for the dismissal of the softball

program. After the testimonies, the plaintiff proved that during the 1991-92 academic school year CSU funded a total of 17 varsity teams for male and female students. In 1991-92, women comprised 35.2% of the total athletes at CSU. At the same time, the enrollment of women at CSU was 47.9% of the total student population. In the current 1992-93 school year, women athletes now make up approximately 37.7% of total athletes participating in CSU's intercollegiate programs. The enrollment of women at CSU is currently 48.2% of the undergraduate student population. Therefore, the enrollment versus participation disparity rate for females at CSU after the termination of the women's softball team is down 10.5% (*Roberts v. Colorado State University*). The district court of Colorado determined that the decision to dismiss the softball program violates Title IX, their disproportionate rates between female athletes and enrollment, and failure to show expansion of female athletics accommodating female interest and abilities. The permanent injunction favored onside the plaintiffs and against the defendant and ordered CSU to reinstate the softball program and benefits accorded to CSU's varsity team. Colorado State University latter appealed to the Supreme Court, saying the lower court erred in ordering it to reinstate softball, but the Supreme Court refuses to hear the case (*Roberts v. Colorado State University, 1993*).

In the case of *Kelley v. Board of trustees of University of Illinois*, on May 7, 1993, the university of Illinois decided to eliminate the men's swimming and diving team, fencing team and women's diving team, but not the women's swimming team. The university of Illinois stated that due to budgetary constraints they had to eliminate those programs. The men's swimming program had been around since 1911 and 11 of the 28 members

of the swim team were on scholarship and the women's swim team had only been around since 1982 and 14 of the 18 members were on scholarship (*Kelley v. Board of Trustees of the Univ. Of Ill*). Gender discrimination is filed often by female athletes under Title IX more often than male, but the University of Illinois men's swim team chose to file a Title IX suit claiming, "Gender Equality" because the men's team is being terminated, but not the women's team. Under Title IX, stating equal opportunity is not a forcible offense in this case. Claiming "equal opportunity" only comes into fruition when the gender claiming gender bias is the underrepresented sex. Therefore, the board had the right to drop the men's swimming program due to budgetary restraints and maintain compliance with Title IX because male participation in athletics proportionate to their enrollment. If the board was to also eliminate the women's swimming then they would be in violation because their level of participation was already disproportionate to their enrollment. In conclusion, the plaintiffs conceded that not only does the University of Illinois have a right to cut programs, but also that the men's swimming team does not have a constitutional right to the continuation of the swimming program under Title IX. The Court granted Defendants' Motion for Summary Judgment, rendering Plaintiffs' Motion for a Preliminary Injunction and Defendants' Motion for a Protective Order Moot. The Clerk of the Court was directed to enter judgment in favor of Defendants and against Plaintiffs. Each party is to bear their own costs (*Kelley v. Board of Trustees of the Univ. Of Ill*).

In this last case of discrimination, the case of *Communities of Equity v. Michigan High School Athletic Association (MHSAA)*, began June 26, 1998 and was not concluded

until December of 2001. In this case parents of female athletes in MHSAA district were frustrated and felt discriminated against with the fact that MHSAA scheduled female sports out of their particular typical season. The scheduling of the girls' sports at issue involves volleyball in the winter, basketball in the fall, soccer in the spring, Lower Peninsula golf in the spring, Lower Peninsula swimming and diving in the fall, and tennis in the fall. Plaintiffs claim that all of these girls' sports, with the exception of girls' golf, are played in a non-traditional season, for example, a season of the year different from when the sport is typically played, and that the non-traditional season is a disadvantageous time of the year to play the sport, causing inequities for girls (*Communities of Equity v. Michigan High School Athletic Association*, 2001). The district court of western Michigan using a bench trial had to decide if the MSHAA violated the 14<sup>th</sup> Amendment equal protection clause and Title IX discrimination against the six female sports. The main factors in this case were “traditional” scheduling verses “Non-traditional” scheduling with female sports in high school. The plaintiffs who led the charge were mother and teacher for Kentwood public schools in the Grand Rapids area Diane Madison who filed on behalf of her three minor daughters and Jay Roberts Eveland who filed on behalf of her two minor daughters at the time. They sought out to prove that women’s basketball in the fall led to a disadvantage for recruitment and scholarship opportunities than if played in the winter. For example, tournament play, exposure opportunities to colleges, championships from surrounding areas, and all other basketball being played in the winter and spring like March Madness helped bring publicity. MHSAA females could not be named All-American or ranked nationally because of the scheduling dilemma within the female athletic program overall, which

also hindered recruitment opportunities. The courts concluded that MHSAA's current scheduling of high school girls' sports in Michigan violates the Equal Protection Clause of the Fourteenth Amendment, Title IX, and Michigan's Elliott-Larsen Civil Rights Act. MHSAA must discontinue from its current scheduling of interscholastic athletics seasons in Michigan. As a result, the court will retain jurisdiction over this case to order that an appropriate remedy be adopted in a Compliance Plan to be submitted by MHSAA. The court also ordered that MHSAA bring its scheduling of the seasons of high school female sports into compliance with the law by the 2003-2004 school year. MHSAA will also be ordered to submit a Compliance Plan consistent with this Opinion by June 24, 2002, detailing a new schedule for female sports seasons that complies with the law (*Communities of Equity v. Michigan High School Athletic Association*, 2001).

### **APPLICATION:**

These cases have shown that discrimination may happen between men and women sports, but equal opportunity is deemed differently in the eyes of Title IX. Gender equality within male sports does weigh different in the eyes of Title IX. All sports matter, but female athletics has carried the burden of fighting for equality for years in the areas of publicity, accountability, and equality in sports. This could assist further in my knowledge in handling discrimination and complaints about gender in sports. Athletic Directors for collegiate teams more so look at sports that draw more attention and gain donors than what is morally and ethically right. It is a plethora of situations over the years that was look at as "normal" and people had to fight for change and equality.

Female athletes not gaining the attention and respect as male athletes is one of them, over the years and as time goes by the recognition shall shift. Being a Athletic Director and speaking to athletes, donors, and fans letting them know that gender equality and having cohesiveness as a University is important. I would use these cases, statistics and application to motivate athletes to motivate fans and donors to support women's athletics and unpopular sports. These cases are the foundation to gaining support and exposure athletes need to gain respect and as leaders in the athletic community we have a responsibility to encourage all athletes, not just those that gain the attention of the biggest donors.



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