

Supreme Court Recognizes Title IX Retaliation Claim.

The U.S. Supreme Court has recently ruled on a gender discrimination case that originated in Alabama. Roderick Jackson, a public high school girls' basketball coach at Birmingham's Ensley High School, complained that the girls' team received less funding for game officials, equipment, and transportation than did the boys' team and, while the boys' team had access to a new gym, the girls' team was limited to use of an old, unheated, non-regulation gym. After making these complaints, he received negative job evaluations and subsequently was stripped of his coaching duties. He filed suit for retaliation against the school board under Title IX of the Education Amendments of 1972, the federal law barring sex discrimination in educational programs that receive federal assistance.

The federal district court held that a retaliation claim was not available under Title IX because it was nowhere mentioned in the statute. The Eleventh Circuit Court of Appeals affirmed, holding that even if a retaliation claim was available to some plaintiffs under Title IX, Jackson could not sue under that theory because he was only "indirectly" effected by the discrimination directed against the girls' team.

Jackson took the case to the Supreme Court, where, by a split 5-4 vote, the Court reversed the court of appeals and held that he could sue to challenge his retaliatory termination under this statute. *Jackson v. Birmingham Board of Education*, No. 02-1672 (Mar. 29, 2005). The Court noted that it has broadly interpreted Title IX and has included within its scope conduct not expressly mentioned, such as sexual harassment. Moreover, retaliation is a form of intentional discrimination on the basis of sex and, as such, should be viewed as covered by Title IX. This is true even if the retaliatory action was not based on the plaintiff's sex. Furthermore, a rule that would allow those who report or complain about discrimination to be subjected to retaliation without a remedy would discourage the making of such reports, impeding the enforcement of the law. Though Jackson was not himself the victim of the underlying sex discrimination, the purposes of the law are best served by protecting his recognition and protest of inequitable treatment based on sex.

Commentators have reported on the dramatic increase in the number of retaliation claims in recent years brought under other anti-discrimination laws. Universities such as UAH will now need to be aware that those who complain about sex discrimination in any educational program must be protected against adverse action, irrespective of whether or not they themselves have directly experienced the discrimination. University policy requires that a complaint of discrimination be immediately investigated and protects the complaining party from any kind of retaliatory action for bringing the complaint forward. Conscientious application of this policy is important in protecting rights secured by Title IX and other, similar laws, as well as in preventing the University from becoming involved in retaliation lawsuits.