A girls' basketball coach at a public high school in Alabama is entitled to bring a claim against the school board for unlawful retaliation after he complained that the school had denied his team equal funding and equal access to athletic equipment and facilities. The U. S. Supreme Court reversed the decisions of two lower federal courts and found that when a funding recipient retaliates against a person because he complains of sex discrimination, it is a violation of Title IX of the Education Amendments of 1972.

The case arose when the coach complained to his supervisors that his team was not receiving an equal amount of funding nor equal access to the school's athletic equipment and facilities, such as the new gymnasium of which the boys' team had exclusively use. Subsequently, the coach received negative work evaluations, and ultimately he was removed from his coaching position and denied the attending supplemental pay, although he was retained as a teacher at the school.

When the former coach filed suit against the school district, both the federal district court and the federal appeals court ruled he had no private right of action for retaliation in violation of the federal Title IX, which states in part that no person shall be subjected to discrimination on the basis of sex under any education program receiving federal funding. The U. S. Court of Appeals for the Eleventh Circuit also concluded that the Title IX regulation expressly prohibiting retaliation does not create a private cause of action, and that even if it did, the former coach would not be entitled to its protection as an indirect victim of retaliation.

Reversing the Eleventh Circuit by a vote of 5 to 4, the U. S. Supreme Court ruled that a private right of action exists to remedy retaliation against an individual who complains about sex discrimination under Title IX. The Court explained that retaliation is a form of intentional discrimination when a funding recipient retaliates against a person after he or she has made a complaint about sex discrimination. Title IX contains broad language prohibiting a funding recipient from intentionally subjecting any person to "discrimination" "on the basis of sex." Retaliation is, by definition, an intentional act and a form of "discrimination" because the complainant is subjected to differential treatment "on the basis of sex" in response to having made an allegation of sex discrimination. Moreover, the Court emphasized that it has repeatedly interpreted Title IX broadly to include conduct not expressly mentioned in the statute, such as sexual harassment.

Similarly, the Court was not convinced by the School Board's argument that the former coach would not be protected because he did not suffer the direct effects of discrimination. The Court noted that the statute is broadly worded; it does not require that the victim of the retaliation also be the victim of the discrimination that is the subject of the original complaint. Where the retaliation occurs because the complainant speaks out about sex discrimination, the statute's "on the basis of sex" requirement is satisfied.

The Court's decision cleared the way for the former coach to proceed with his claims of retaliation under Title IX. The case has been sent back to the trial court to determine whether he has sufficient proof that the School Board retaliated against him because he complained of sex discrimination. [Jackson v. Birmingham Board of Education [Petition for certiorari from 11th Circuit] Docket No. 02-1672, March 29, 2005.]
Editor's Note: Retaliation claims are one of the fastest growing forms of employment litigation. They often present issues of fact that courts are not comfortable dismissing on a motion for summary judgment. Often, they survive even after any underlying claims of unlawful discrimination are defeated.

Schools, colleges, and universities receiving federal funds are subject to the Court’s ruling and should prepare themselves for the legal issues that will flow from it. In essence, the Court’s decision establishes a new cause of action for retaliation under Title IX.

Starting immediately, schools, colleges, and universities covered by Title IX should review their complaint procedures to make sure they permit students and employees to complain about perceived sex discrimination whether or not they are subjected to the alleged discriminatory practice or conduct. Officials of schools, colleges, and universities must be aware that complaints of sex discrimination or retaliation of the nature raised by the coach in this case must be investigated and resolved. Thereafter, any adverse action taken against a student or employee who made such a complaint must be scrutinized to verify that it is based on legitimate grounds unrelated to the complaint.

Schools and universities also must be aware that the conduct of their administrators, directors, department heads, managers and supervisors is now vulnerable to a claim of retaliation for which an individual can pursue a private cause of action for monetary and other damages. All management personnel should be trained to understand the impact of this decision, to know their obligations under the law, and to be aware of the types of conduct which now may be construed as unlawful and which create the potential for liability.

Jackson Lewis attorneys are available to counsel publicly funded schools, colleges and universities on the policies, programs and practices which may be impacted by this ruling. For assistance, please contact the attorney with whom you regularly work, or partner Joseph A. Saccomano, Jr.

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