UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

RONNI ALEXANDER, ET AL, Plaintiffs	
VS.	CIVIL NO. N-77-277
YALE UNIVERSITY, Defendant	

RULING ON MOTION TO DISMISS

Six months ago this Court denied defendant's motion to dismiss the complaint of a Yale senior, Pamela Price, who asserted an "implied" right of federal suit under Title IX's prohibition against sex discrimination in federally funded educational activities, cf. 20 U.S.C. § 1681(a), claiming that the university refused to act on her complaint that a low mark in her major field of study resulted from her rejection of the course instructor's sexual advances. Familiarity with that earlier opinion is assumed, and on reflection and study of the record on defendant's second motion to dismiss the undersigned perceives no sufficient reason to depart from the prior decision's analysis and conclusions.

In so indicating, it should perhaps be noted in passing that defendant has accurately sensed that this Court was in part concerned in the earlier motion proceedings at the illogic and unfairness involved if a state university student

could press her Title IX claim through suit under the traditional Civil Rights Act addressed to "state" denial of federal rights, 42 U.S.C. § 1983, but the identically situated private college student was denied recourse to the courts, cf. Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971). Defendant's current observation that the private/public distinction is no anomaly but instead commonly accepted is beside the point in this instance; the analogy offered is the fundamental distinction made by the Fourteenth Amendment's constraints on state action, but Constitutional rights to due process and equal protection themselves exist only as a shield against the unfettered exercise of official power, while Title IX gives both the public and private institution student the same statutory right of freedom from discrimination and the question is solely how that right will be enforced. Although defendant also suggested that the grant of a private suit remedy may be an unconstitutional application of Title IX, the discrimination bar is surely a permissible condition to acceptance of federal funding, and enforcement by private suit in appropriate circumstances is a matter not of constitutional moment but of whether the judicial remedy has been properly implied.

Plaintiff holds the more general view that her specific experience is a function of Yale's asserted noncompliance with the basic implementing regulation calling for Title IX "grievance procedures", 45 C.F.R. § 86.8(b), surely a question of some importance for the enforcing agency. There was good reason at the outset of her suit to believe that relegating her to the expressly provided administrative remedy, cf. 20

U.S.C. § 1682, would be an empty exercise. Even prompt administrative action could not have been realistically expected to yield the effective immediate relief which was potentially critical, since plaintiff was then in the midst of the law school application process and apprehensive at possible imminent injury in that competitive situation because of her mark. That conclusion made it unnecessary to weigh factual contentions made by amici curiae that delayed and circumscribed agency enforcement of the law had proved the administrative remedy inadequate generally. An affidavit submitted by defendant's attorney now represents that HEW regional staff counsel has related that the office is "generally able to process complaints within established timetables, which range from 105 days to 215 days, and . . . may be extended if required for conciliation or data collection". If inconsistent with information from amici concerning agency practices, counsel's affidavit only confirms that the administrative remedy would have been futile in plaintiff's circumstances in December.

Following denial of the initial motion to dismiss, plaintiff's ensuing application for a temporary injunction went off without formal hearing when the parties agreed to the university's dispatching letters to law schools to which she had applied advising that the validity of the political science grade in question was being contested in a lawsuit. Plaintiff has now been admitted to the University of California at Berkeley, but wishes to pursue that university's special four-year program leading to both a law school degree and a master's degree in a field of graduate study -- political science in this instance -- because "interested in the possi-

bility of pursuing an academic career", and informs the Court that the necessary further application and supporting materials must be submitted by December of this year.

In short, plaintiff's situation is still such that the purported wrong complained of could directly cause her significant concrete injury as an impediment to career plans, but the circumstances now allow and perhaps demand definitive inquiry into the administrative remedy's adequacy -- of central concern in implying remedy by suit -- including judicial determination of the merit or lack of merit in plaintiff's contention that general experience has in fact already shown administrative enforcement of Title IX to be ineffective. Whether the administrative remedy bars suit or at least requires exhaustion may and should now be promptly decided, and decided in the context of a determination of the question of adequacy in fact, left open previously for development of a pertinent record by the parties.

The motion to dismiss is accordingly hereby denied on the record presented; provided, that counsel are to confer forthwith concerning preparation for and scheduling of hearing before the trial Judge of the potentially dispositive threshold issue mentioned above. In the interim, any discovery and development of evidence should be focused on that question, to facilitate prompt final decision of the issue, cf. Rule 42(b), Fed. R. Civ. P.

Dated at New Haven, Connecticut, this 30th day of June 1978.

Arthur H. Latimer
United States Magistrate