2007 WL 9221306
Only the Westlaw citation is currently available.
United States District Court,
W.D. Michigan, Southern Division.

COMMUNITIES FOR EQUITY, et al., Plaintiffs,
v.
MICHIGAN HIGH SCHOOL, Athletic Association, et al., Defendants.

No. 1:98–CV–479.
|
May 2, 2007.

Attorneys and Law Firms

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OPINION

ENSLEN, Chief J.

***1** This matter is before the Court on Defendants' Motion *in Limine* to Exclude Application of [the Office of the Civil Rights] Inter–Collegiate Athletic Policy Interpretation (Policy Interpretation). Defendants claim that the Office of Civil Rights' ("OCR") Policy Interpretation[1] (1) does not apply to interscholastic athletics, (2) is unconstitutional as it violates the equal protection clause, and (3) is not effective because it was not signed by the President. The Court denies the Motion.

The Court is unsure as to why Defendants have filed this as a Motion *in Limine* because they fail to make any argument for exclusion based on the Federal Rules of Evidence. This Court has previously stated that motions *in limine* allow the Court to make preliminary rulings as to the admissibility of evidence. *See Donnelly Corp. v. Gentex Corp.*, 918 F.Supp. 1126, 1130 (W.D.Mich.1996). The Court does not interpret Defendants' Motion as one seeking resolution of an evidentiary matter. Rather, the Motion seems to be requesting the Court indicate what law it will apply to this case. This alone warrants dismissal of the Motion. Given the tortured history of this case, however, the Court will address Defendants' claims briefly but will not indicate what law it will apply.

1. Does the Policy Interpretation Apply to Interscholastic Athletics?

Defendants argue that the Policy Interpretation does not apply to interscholastic athletics because the Policy Interpretation makes specific references indicating it is to apply to intercollegiate athletics. While it is true that the Policy Interpretation is meant to apply to intercollegiate athletics, the Policy Interpretation specifically states that its principles "will often apply to club, intramural, and interscholastic athletic programs," which are also covered by regulation. 44 Fed.Reg. at 71,413. Thus, the Policy Interpretation explicitly states that it may apply to interscholastic athletics. Moreover, the Sixth Circuit has held that the Policy Interpretation applies to interscholastic athletics. *Horner v. Kentucky High Sch. Athletic Ass'n*, 43 F.3d 265, 273 (6th Cir.1994) (citing *Williams v. Sch. Dist. of Bethlehem, PA.*, 998 F.2d 168, 171 (3rd Cir.1993)).

Defendants' reliance on footnote one of the Policy Interpretation is misplaced. The language on which Defendants rely states that "club teams will not be considered to be intercollegiate teams ..." 44 Fed.Reg. at 71,413–14 n. 1. Defendants argue that this language makes the Policy inapplicable to interscholastic athletics. The Court disagrees. The footnote does not mention interscholastic athletics and appears to be differentiating between intercollegiate club and varsity teams.

Based on this, Defendants' argument that the Policy Interpretation should be excluded because it does not apply to interscholastic athletics must fail.

2. Is the Policy Interpretation Unconstitutional?

Defendants argue that the Policy Interpretation is unconstitutional because it violates the equal protection clause. To support their argument, Defendants rely on the dissenting opinion in *Cohen v. Brown*, 101 F.3d 155, 188 (1st Cir.1996). In the dissent, Chief Judge Torruella concludes that the three-prong test the Policy Interpretation advocates for determining compliance with

participation opportunities under Title DC is quota-based and contrary to the equal protection clause. *See id.*, at 195 (citing *Adarand v. Pena*, 515 U.S. 200, 209–10, 115 S.Ct. 2097, 132 L.Ed.2d 158 (1995)).

***2** The Court again disagrees with Defendants' argument and reliance on *Cohen*. Various Circuit Courts of Appeal have upheld the validity of the Policy Interpretation and have applied it when determining Title DC athletic claims. *See Pederson v. Louisiana State Univ.*, 213 F.3d 858, 879 (5th Cir.2000); *Neal v. Bd. of Trustees of California State Univs.*, 198 F.3d 763, 771 (9th Cir.1999); *Boulahanis v. Bd. of Regents*, 198 F.3d 633, 637–38 (7th Cir.1999); *Cohen*, 101 F.3d at 637–38; *Horner*, 43 F.3d at 273; *Roberts v. Colorado State Bd. of Ag.*, 998 F.2d 824,828 (10th Cir.1993), *Williams*, 998 F.2d at 171. The Court, therefore, will not exclude the Policy Interpretation based on Defendants' argument that it is unconstitutional.

3. Is the Policy Interpretation Effective?

Defendants argue that the Policy Interpretation is not effective because it was not signed by the President. Defendants cite to the district court's decision in *Pederson* and claim that it stands for the proposition that the Policy Interpretation must have been signed by the President to be effective. *Pederson v. Louisiana State Univ.*, 912 F.Supp. 892,910 (M.D.La.1996)("[The Policy Interpretation] was never approved by the president. The Policy Interpretation does not have the binding effect of those rules, regulations or orders authorized by 20 U.S.C. § 1682.").

First, the Court finds no reason why the Policy Interpretation must be signed by the President as it is only a guideline to interpret Title IX and not a rule, regulation, or order. *See Cohen*, 879 F.Supp. at 199. Second, the *Pederson* court still relied on the Policy Interpretation when analyzing the plaintiffs' claims, even though it noted that it had not been submitted to the President for approval. *Pederson*, 910 F.Supp. at 910–12. Therefore, this argument does not justify excluding the Policy Interpretation.

Defendants have not produced a reason, evidentiary or otherwise, to exclude the Policy Interpretation. Thus, the Court denies its Motion *in Limine*.

An Order consistent with this Opinion will follow.

All Citations

Not Reported in F.Supp.2d, 2007 WL 9221306

Footnotes

1 Interpretation of Title JX Education Amendments of 1972, 44 Fed.Reg. 71413 (Dec. 11, 1979)(to be codified at 45 C.F.R. pt. 86).