Lawsuits, disputes reflect continuing tension over Title IX - USA TODAY

By Jill Lieber Steeg, USA TODAY

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After they were fired — Vivas in 2004, Johnson-Klein in 2005 — they went to court, alleging sex discrimination.

Separate juries sided with the women in 2007, and awards in the cases could cost Fresno State — and by extension California taxpayers — more than $14 million, plus interest that's accruing while the university appeals. That doesn't include the more than $3.5 million the school has paid to settle with Diane Milutinovich, a former associate athletics director who had asked why she was fired for "budget reasons" in 2002 — and Fresno State's athletics department increased its budget by $2.7 million and added 17 positions over the next two years.

The Fresno State cases are part of a series of lawsuits that have landed before courts since the U.S. Supreme Court ruled in 2005 that whistle-blowers who allege retaliation in Title IX cases can sue for monetary damages. The disputes — and others from Hawaii to Florida involving similar claims against colleges — reflect the ongoing tension over the law that bans sex discrimination at schools receiving federal funds.

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Title IX has come to stand for equality in college sports, though it applies to all schools receiving federal funds, not just colleges, and not just to athletics. There's no longer a debate over whether women should have equal access to medical and law schools, but Title IX's role in athletics remains controversial. Some colleges have dropped men's teams in the name of the law, leading to debates over whether it discriminates against men. Meanwhile, complaints persist that schools aren't complying with the law.

"I would say 80% (of colleges) have compliance problems, enough problems that they would technically be in violation of Title IX," says Valerie Bonnette, a San Diego-based Title IX consultant whose clients have included Fresno State, according to the school. "We're not seeing problems that are nearly as egregious" as in the past, "but they're still there."

California a hotbed of litigation

The Supreme Court's 2005 ruling ensured that teachers, coaches and administrators who complain of sex discrimination on behalf of others have a right to sue if they think they have been victims of retaliation. The ruling allowed attorneys to feel
comfortable pursuing such cases against deep-pocketed colleges — and for coaches, long reluctant to challenge employers, to feel confident using the legal system. As a result, several Title IX claims surfaced nationally.

Since April 2005, there have been cases filed against Montana State University, the University of Hawaii and Florida Gulf Coast University in Fort Myers, Fla. In the Montana State case, former women's basketball coach Robin Potera-Haskins alleges discrimination over pay and perks and says she faced retaliation for complaining about it.

Former Florida Gulf Coast women's volleyball coach Jaye Flood and former general counsel Wendy Morris are pursuing separate cases alleging retaliation for raising concerns about gender inequities within the university.

And in the Hawaii case, women's track coach Carmyn James filed a sex discrimination lawsuit against the university and alleged that then-athletics director Herman Frazier discriminated against her because she pushed for gender equity. She decided not to pursue the claim after having what she told the Honolulu Advertiser were "positive and productive meetings" with athletics department officials.

Most of the recent Title IX litigation has been focused on California, where state law and aggressive advocates have created a sort of incubator for potential complainants.

In 1976, the state passed its version of the federal Title IX law and made it focus on intercollegiate athletics. In 1993, the California National Organization for Women (Cal-NOW) used the state law to sue 19 schools in the Cal State University system, alleging it was not complying. Eight months later, the sides entered into a consent decree focusing on participation, expenditures and scholarships for women that Cal-NOW declared over in 2000 but still monitors.

Cal-NOW has stayed active in athletics issues, filing complaints or lending support in seven college cases and three high school cases over the last 15 years.

Meanwhile, one state lawmaker says some of the state's public universities have become so proficient at raising private funds that state money provides a much smaller percentage of their budgets than it once did. As a result, he says, some top school officials feel less bound by legislators' actions. "I think that brings an arrogance to the presidents of these universities … in that they start to believe they can do anything they want," says California state Sen. Dean Florez, the Senate Select Committee on Gender Discrimination and Title IX Implementation chairman.

Fresno State is among several California colleges that recently have paid settlements or damages — or face the prospect of paying them — in Title IX disputes. Since January 2007, plaintiffs against California-Berkeley, California-Davis and Sonoma State have combined to rack up more than $4.5 million through jury awards or settlement. That includes $3.5 million to ex-Cal women's swimming coach and athletics administrator Karen Moe Humphreys, who filed a discrimination and retaliation suit after being laid off in 2004. She claimed she was laid off because she complained about treatment of women in the athletics department.

Of the 13 complaints, lawsuits or appeals pending:

- Four involve junior colleges — Feather River College in Quincy, which faces two lawsuits; Cabrillo College in Apts and San Diego Mesa College. San Diego Mesa, for example, is accused of hostility toward former women's basketball coach Lorri Sulzpioz and her domestic partner, who also was the team's operations director. The San Diego Community College District's Richard Dittbenner said the district "does not comment on legal matters affecting the privacy of student, staff and faculty."

- One is against a private school — Southern California — in a complaint to the U.S. Education Department's Office for Civil Rights (OCR) that has been pending for more than nine years.

The complaint alleges discrimination against female athletes in terms of sports offered for women, athletic scholarships, coaching and tutoring services, assignment and compensation of coaches and tutors, and recruitment.

USC believes it always has been in compliance with Title IX, athletics department spokesman Tim Tessalone said via e-mail.

- Cases also are pending against San Diego State (lawsuit), Cal State-Northridge (OCR complaint) and California-Davis (two lawsuits, one of which is on appeal). Ex-San Diego State swimming and diving coach Deena Deardurff Schmidt filed a sex discrimination suit, alleging years of mistreatment that she says included being sexually harassed by an unidentified booster. San Diego State athletics department spokesman Mike May says department policy doesn't allow for comment on active litigation.

At Fresno State, university President John Welty says while the school is appealing the court judgments against it, officials have made changes aimed at enhancing gender equity. He says they include new procedures for handling grievances and adding women's teams in lacrosse and swimming and diving in 2008-09.

Welty, who was appointed in 1991, acknowledges the Title IX lawsuits will be part of his legacy.

"When there are problems, usually the person at the top is identified as being responsible, and I accept that," he says. "But I also accept responsibility for correcting the problems we've identified. ... I think we've made a major commitment to women here, and the women will be treated equally."

Meanwhile, Fresno State is facing two more discrimination allegations — another lawsuit and a complaint with the OCR that the school violated Title IX.
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Cal State system counsel Dawn Theodora said Friday via e-mail that the Johnson-Klein and Vivas cases "are in the very early stages of appeal and we cannot comment specifically on them. We have several grounds for appeal. … While we will continue to exercise our legal options … we hope that both cases can be resolved quickly, fairly and appropriately."

Florez has held hearings to ask Fresno State, CSU system and UC system officials about their compliance with Title IX. His staff is examining compliance by other California schools, including the state’s 109 community colleges, and plans to look at high schools.

Florez also has introduced legislation designed to add oversight of college athletics programs. His boldest idea? If a school failed to comply with Title IX for two consecutive years, an arm of the state government would take over 20% of athletics spending and be empowered to make adjustments to meet Title IX compliance.

"If there's no enforcement (of Title IX), there's no penalty, there's no way to get the universities to understand they should comply," Florez says. "That's a problem."

'They stole my career'

Nobody understands that better than the three Fresno State whistle-blowers, all of whom were fired before filing their suits. Although they have won or settled for millions — pending the university's appeals — they lost their jobs, and they believe their careers in college athletics, for speaking up and taking on the university in court.

"It makes me want to cry," says Milutinovich, the former athletics administrator. "All we ever wanted to do is work and do our jobs."

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"Both the Vivas and Johnson-Klein cases are personnel issues," athletics department spokesman Steve Weakland says. "We did our due diligence. We felt it was fair and just to make the job changes."

The Johnson-Klein case is sensitive not only because of the money but also because Fresno State argued that Johnson-Klein was fired because she obtained pain medication from her players, lied about having done so when confronted by university officials, was abusive to players and violated NCAA rules.

She calls obtaining the medication from the players "a very poor decision" but also says, "It's criminal (for the school to suggest) … I was a drug addict and a thief and a liar. … They stole my career."

These days, Johnson-Klein, Milutinovich and Vivas say they can't find work in college athletics — and doubt they will. Milutinovich lives in Fresno, where her home is engulfed by a photocopier and boxes of documents from the suits. Vivas has a home in Fresno but lives mostly in Portland, Ore. Johnson-Klein keeps busy with her family; she and her husband, Chuck, have six children between them and host two foreign students. She is writing a book on her experiences.

Meanwhile, Fresno State's appeals of Johnson-Klein's and Vivas' cases aren't all that remain for the school to resolve.

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Contributing: Erik Brady

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May 12, 2008

Lawsuits add to Title IX athletics tension throughout U.S.

By JILL LIEBER STEEG
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There’s no longer a debate over whether women should have equal access to medical and law schools, but Title IX’s application to athletics remains controversial. Some colleges have dropped men’s teams in the name of the law, leading to debates over whether it discriminates against male athletes. Meanwhile, complaints that schools aren’t complying with the law persist.

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The Supreme Court’s ruling three years ago ensured that teachers, coaches and administrators who complain of sex discrimination on behalf of others have a right to sue if they believe they have been victims of retaliation.

The decision laid the groundwork for attorneys to feel comfortable pursuing such cases against deep-pocketed institutions - and for coaches, historically reluctant to challenge their employers in the tightly knit community of athletics departments, to feel confident about using the legal system to pursue their claims.

As a result, several Title IX-related claims have surfaced nationally.

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