

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

ANNA DONLAN,

Plaintiff,

v.

MEMORANDUM AND ORDER

SCHOOL DISTRICT OF REEDSBURG,
REEDSBURG BOARD OF EDUCATION,
BRIAN YAGER, BARBARA MORTIMORE,
STEVE BALDA, JOHN PEARSON, MARK
PELTON, HEATHER SCULLY, JUDY
STOECKMAN and LORI TILLEMA,

05-C-497-S

Defendants.

On November 2, 2005 the Court granted plaintiff's motion to amend her complaint to add defendants Barbara Mortimore, Steve Balda, John Pearson, Mark Pelton, Heather Scully, Judy Stoeckman and Lori Tillema. Plaintiff pursues claims under 42 U.S.C. § 1983 against the individual defendants for violation of her Fourteenth Amendment equal protection rights. Defendants move to strike the amended complaint contending that these claims are preempted by Title IX.

In Waid v. Merril Area Public Schools, 91 F.3d 857, 862 (7th Cir. 1996), the Court held as follows:

In particular, a plaintiff may not claim that an instance of intentional discrimination simultaneously creates causes of action under Title IX and under § 1983 and the Equal Protection Clause of the Fourteenth Amendment; the availability of a Title IX claim precludes the pursuit of a § 1983 claim.

Pursuant to Waid, plaintiff's equal protection claim under 42 U.S.C. § 1983 is preempted by Title IX. As the Court stated, "Congress intended to place the burden of compliance with civil rights law on educational institutions themselves, not on the individual officials associated with those institutions." Id.

Plaintiff contends that the United States Supreme Court in Gebser v. Lago Vista Ind. Sch. District, 524 U.S. 274 (1998), overruled Waid. In Gebser, the Court held that a school district is not liable for damages under Title IX for a teacher's sexual harassment of a student absent actual notice and deliberate indifference. The Court then stated, "Our decision does not affect any right of recovery that an individual may have against the school district as a matter of state law or against a teacher in his individual capacity under state law or under 42 U.S.C. § 1983." It did not overrule Waid.

In fact after Gebser, the United States Court of Appeals for the Seventh Circuit held that Title IX preempted an equal protection claim under 42 U.S.C. § 1983 and the United States Supreme Court denied certiorari. Boulahanis v. Board of Regents, 198 F. 3d 633, 640 (7th Cir. 1999), cert. denied, 530 U.S. 1284 (2000). Accordingly, defendants' motion to strike the amended complaint adding individual defendants Mortimore, Balda, Pearson, Pelton, Scully, Stoeckman and Tillema will be granted because equal protection claims under 42 U.S.C. § 1983 are preempted by Title IX.

ORDER

IT IS ORDERED that defendants' motion to strike the amended complaint is GRANTED.

Entered this 22nd day of November, 2005.

BY THE COURT:

S/

JOHN C. SHABAZ
District Judge