

Handout 7

Chipman v. Grant County School District

Civil Action No. 98-180
30 F.Supp.2d 975 (E.D. Ky. 1998)

BERTELSMAN, District Judge.

The plaintiffs are Somer Chipman and Chasity Glass. The defendants are the Grant County School District, James Simpson, Superintendent of Grant County School District, and members of the Grant County Board of Education...

FACTS

The National Honor Society of Secondary Schools (NHS) recognizes high school students for outstanding achievement. High schools may establish a local NHS chapter upon paying a chartering fee and annual initiation fee to the NHS. Chapters are required to adopt the NHS constitution, but each chapter may establish different admission criteria so long as those criteria are consistent with the NHS constitution. A pertinent provision of the NHS handbook provides:

It should be noted that, under provisions of federal law, pregnancy – whether within or without wedlock – cannot be the basis for automatic denial of the right to participate in any public school activity. It may properly be considered, however, like any other circumstance, as a factor to be assessed in determining character as it applies to the National Honor Society. But pregnancy may be taken into account in determining character only if evidence of paternity is similarly regarded.

Grant County High School has established a local NHS chapter. As required by the NHS constitution, those offered admission to the Grant County NHS must demonstrate outstanding scholarship, service, leadership, and character. Although the NHS permits anyone with a grade point average of 3.0 or better to be considered for admission, the Grant County chapter requires a grade point average of at least 3.5.

Plaintiffs are both seniors at Grant County High School. Both plaintiffs have grade point averages substantially above 3.5. ... In the Spring of 1998, when [Chastity was a mother and Somer was visibly pregnant], the GCNHS selection committee voted to offer NHS membership to every junior with a 3.5 or better grade point average except the plaintiffs. There is strong evidence that the GCNHS selection committee considered the fact that each plaintiff had engaged in premarital sexual activity and had given birth to a child out of wedlock. There is further strong evidence that the selection committee did not ask those students offered admission to the NHS – male or female – if they had engaged in premarital sexual activity. ...

ANALYSIS

Title IX prohibits sex discrimination in any educational program or activity receiving federal financial assistance. Specifically, Title IX provides in part:

Unit 3: Lesson 3

Title IX: Gender Equality in Public Education

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

Regulations promulgated under Title IX unequivocally apply its prohibition against sex discrimination to discrimination on the basis of pregnancy and parental status, stating:

A recipient [of federal funds, such as Grant County Schools] shall not apply any rule concerning a student's actual or potential parental, family, or marital status which treats students differently on the basis of sex.

34 C.F.R. § 106.40(b) specifically provides:

(b) Pregnancy and related conditions. (1) A recipient shall not discriminate against any student, or exclude any student from its education program or activity, including any class or extracurricular activity, on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient.

The issue, then, is whether refusing to admit the plaintiffs to the GCNHS because they engaged in premarital sex and became pregnant constitutes exclusion “on the basis of pregnancy.” Three prior cases have addressed the issue of exclusion from a NHS chapter due to pregnancy or premarital sexual activity.

In the most recent of the three, ... the court determined that the plaintiff was dismissed from the NHS not because she became pregnant but because she had engaged in premarital sex. In *Pfeiffer v. Marion Center Area School District* (1990), the court concluded that, as long as both genders were treated similarly with regard to premarital sex, the pregnant student could properly be dismissed from the NHS because “regulation of conduct of unmarried high school student members is within the realm of authority of the National Honor Society given its emphasis on leadership and character.” The court emphasized the requirement that the genders be treated similarly[.] [The case was sent back to the trial court because a male student testified that he had fathered a child, yet had not been asked to resign from NHS].

In an earlier case from the Central District of Illinois, the court reached a contrary conclusion. In *Wort v. Vierling* (1984), the court concluded that the plaintiff had been dismissed from the National Honor Society on the basis of her pregnancy rather than the premarital sex that resulted in the pregnancy. Therefore, because only women can become pregnant, the dismissal necessarily constituted unequal treatment based on gender ...

Finally, in *Cazares v. Barber* [a 1990 Arizona District Court case], the court encountered a relatively clear-cut case of gender discrimination. In that case, an otherwise eligible pregnant girl was denied entry into the NHS, but a male student who had fathered a child out of wedlock was accepted into the chapter. With little discussion, the court in that case determined that the plaintiff's denial of membership in the NHS violated [] Title IX ...

Unit 3: Lesson 3

Title IX: Gender Equality in Public Education

This court agrees with the two latter cases. ...

The plaintiffs have met their burden of proving that the challenged practices of the defendants in screening students for admission to the NHS has caused a significant adverse effect on the protected group, i.e., young women who have become pregnant from premarital sex and have become visibly pregnant. ...

Although 100% of young women who are visibly pregnant or who have had a child out of wedlock are denied membership, as far as the record reflects, defendants' policy excludes 0% of young men who have had premarital sexual relations and 0% of young women who have had such relations but have not become pregnant or have elected to have an early abortion. ...

[A] plaintiff seeking to prove discrimination must first prove that she is a member of a protected class who has been treated differently because of her sex or, in this case, because of pregnancy. Here, plaintiffs must prove they were treated differently than similarly situated non-pregnant students. That these prerequisites have been met here is obvious. ...

[T]he defendants here have failed to articulate a legitimate credible non-discriminatory reason for their NHS pregnancy policy. The reasons articulated for the exclusion of the plaintiffs are vague, conclusory and undocumented. In the face of the admitted fact that plaintiffs were the only students surpassing the grade cutoff who were excluded, the court on the present record finds these proffered non-discriminatory reasons insufficient and not credible. ...

IT IS ORDERED AND ADJUDGED:

1. That plaintiffs' motion for preliminary injunction [is] granted;
2. That ... the defendants ... admit the plaintiffs to the Grant County High School Chapter of the National Honor Society, not later than January 31, 1999.

Directions: Answer the following questions about *Chipman v. Grant County School District*.

1. Who are the plaintiffs and the defendants?
2. How does the national NHS handbook deal with parental status?
3. What facts show the plaintiffs were discriminated against?

Unit 3: Lesson 3

Title IX: Gender Equality in Public Education

4. What have other courts determined when faced with this issue? List the three cases discussed in this excerpt and what those cases concluded.

5. How did the plaintiffs show discrimination?

7. What does the court order?

8. Why is pregnancy discrimination a type of gender discrimination?