

## **Sexual Harassment Against Transsexual Covered By Title IX**

Rejecting a motion to dismiss in *Miles v. New York University*, 1997 WL 626891 (S.D.N.Y., Oct. 7), U.S. District Judge Whitman Knapp found that a sexual harassment complaint against a professor by a student who was undergoing a sex reassignment process from male to female stated a valid claim under Title IX of the Education Amendments of 1972, 20 U.S.C. sec. 1681 et seq.

According to the opinion, plaintiff Jennifer Miles "had undergone hormone treatments for breast augmentation but had not yet had sex-reassignment surgery at the time of the events alleged in the complaint." Miles alleged that while a grad student in musicology at NYU, she was assigned a series of one-on-one tutorials with a professor who "began making wholly unwelcome sexual advances... [which] included the fondling of breasts, buttocks, and crotch, forcible attempts to kiss, and repeated propositioning for a sexual relationship." Miles complained to the university's sexual harassment committee, which reprimanded the professor; nonetheless, the professor was granted tenure, even though there were several other similar complaints on file against him from other female students. Although the commit-

tee requested "that certain deans investigate a possible pattern of harassment in the music department," the deans took no action and never even discussed the allegations with the professor. Miles also alleged that after she filed her complaint, she was treated in hostile fashion by professors and administrators and, as a result, prematurely left the doctoral program and continues to suffer mental distress, anguish and pain.

Judge Knapp rejected NYU's argument that it was not responsible for the professor's conduct cursorily, stating: "[Any] jury that accepted as true all facts claimed by plaintiff would surely find in her favor on this issue." Turning to the argument that Miles had not stated a cause of action under Title IX, which prohibits sex discrimination by institutions of higher education that receive federal funds, Knapp rejected the argument that Miles' transsexual status relieved the university of liability. "There is no conceivable reason why such conduct should be rewarded with legal pardon just because, unbeknownst to Professor Eisen and everyone else at the university, plaintiff was not a biological female. So far as we can determine, no other defendant has ever sought to justify such conduct by this type of defense."

Reviewing cases that had rejected discrimination claims by transsexuals under Title VII, Knapp pointed out that they dealt with the quite different issue of employment discrimination based on transsexuality. He quoted from dicta in one of those cases, *Holloway v. Arthur Anderson, Inc.*, 566 F.2d 659 (9th Cir. 1977), as follows: "transsexuals claiming discrimination because of their sex, male or female, would clearly state a cause of action under Title VII."

"There can be no doubt," concluded Knapp, "that Professor Eisen's conduct with respect to Jennifer Miles, assuming it can be proven, related to sex and sex alone. Title IX was enacted precisely to deter that type of behavior, even though the legislators may not have had in mind the specific fact pattern here involved."

On to trial (unless NYU settles on terms acceptable to Miles). Miles is represented by William H. Kaiser of Kaiser, Saurborn & Mair, PC, in New York City. A.S.L.