

## LSU grades case likely to stay in federal court

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Two lawsuits related to allegations that teachers were pressured to change LSU football players' grades seem likely to stay in federal court.

A U.S. Supreme Court decision issued in a Georgia case in May is the reason.

The high court ruled that, if a state voluntarily moves a lawsuit to federal court from state court, it essentially waives its guaranty of immunity from suit in federal court.

The ruling came in the case of a Kennesaw State University assistant professor who sued the school in March 2000.

Paul D. Lapedes, the teacher in question, accused the school of defaming him and violating his civil rights when it launched an investigation into what he called baseless allegations of sexual harassment.

The Supreme Court didn't address the merits of Lapedes' claims, only the issue of whether the university could have the case heard in federal court.

The high court, in a nutshell, said state agencies can't have it both ways by moving a suit to federal court, then claiming immunity from being sued there under the 11th Amendment.

Under the 11th Amendment to the Constitution, a state cannot be sued in federal court without its permission.

By moving a case to federal court, a state gave itself a better chance of having the lawsuit dismissed.

Many lawsuits against the state moved to U.S. District Court in Baton Rouge have been dismissed or the plaintiffs have had to get by an attempt to dismiss the state as a defendant under that clause.

Right now, the legal battle in the LSU cases is over which court will hear the suits.

Two teachers, kinesiology instructor Tiffany Mayne and former kinesiology graduate student Caroline Owen, sued the university separately in 19th Judicial District Court in Baton Rouge.

Owen was a graduate assistant at the school and seeking a master's degree in kinesiology. Mayne was a full-time and part-time kinesiology instructor at LSU for about 10 years before leaving the school.

Both claim they were pressured into changing players' grades and hiding academic misconduct during the 2000-2001 school year to keep players eligible for the 2000 Peach Bowl.

The university has denied the allegations and says it is investigating the academic fraud claims.

The university moved both cases to U.S. District Court in Baton Rouge, claiming the allegations in the lawsuit are questions of federal law and should be heard there.

Aidan Reynolds, the attorney for Owens and Mayne, immediately sought to return the cases to state court, saying LSU and its attorneys were not authorized to waive the state's 11th Amendment immunity.

Reynolds' motion for remand says, "The Eleventh Amendment is a jurisdictional bar to suit in federal court absent a valid and express waiver of immunity." LSU contends that, with or without the Supreme Court decision, the case can and should be heard in federal court.

A state law allows a state agency, such as the university, to move cases into federal court without a formal, written waiver of immunity, wrote Jennifer Siglar, an attorney for LSU.

"The state is afforded the flexibility to look to a federal forum on its own initiative," Siglar wrote in a motion to keep the case in federal court.

U.S. Magistrate Stephen Riedlinger, ruling in Owen's case, said Siglar is right - the state has the right to move the case to federal court and the Supreme Court's decision in May undercuts Reynolds' argument that the state can then claim immunity.

Riedlinger's decision still must be approved by U.S. District Judge Ralph Tyson, and Reynolds will get a chance to object to it.

Given that the allegations and law in Mayne's case are similar to those in Owen's, Riedlinger might well issue the same ruling again.

And that would be enough to give LSU a pair of courtroom victories early in the legal game.

Brett Barrouquere covers federal court for The Advocate.

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