

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

TAI KWAN CURETON and	:	CIVIL ACTION
LEATRICE SHAW,	:	
each individually and on behalf of all	:	NO. 97-131
others similarly situated,	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
NATIONAL COLLEGIATE	:	
ATHLETIC ASSOCIATION,	:	
Defendant.	:	

MEMORANDUM

BUCKWALTER, J.

October 15, 1998

The defendant's motion to amend order to certify question for immediate appeal is denied for the following reasons.

While this court's order of October 8, 1997 does involve a controlling question of law, I believe that there is not a substantial ground for difference of opinion based upon decisions of this Circuit, the First, Second, Fifth, Sixth, Seventh, Ninth, Tenth and Eleventh as cited in plaintiffs' brief. Defendant argues in response to the circuit cases that they do not really directly address the precise issue in this case and to a certain extent I agree with defendant. But in the words of Judge Cowen in Chester Residents v. Seif, 132 F.3d 925 (3rd Cir. 1997), "we note that the decisions of other courts of appeals indicate support of our reasoning."

It is the procedural history of the Chester Residents case which, defendant argues in its brief, supports its position that a substantial ground for difference of opinion exists because of the Supreme Court's granting certiorari. Unfortunately, one can only guess as to what the outcome of the Supreme Court review would have been, since the judgment of the Court of Appeals was vacated with instruction to dismiss.

In summary, in light of overwhelming circuit law to the contrary, I do not believe I can fairly imply from the grant of certiorari in Chester Residents that a substantial ground for difference of opinion exists regarding the issue of whether Title VI implementing regulations create an implied right of action based upon unintentional discrimination.

Finally, I do not believe appellate review will materially advance the termination of what has been a carefully managed case by counsel and the court up to this time. With discovery to be completed by November 16, 1998, summary judgment motions due no later than February 17, 1999 (one has already been filed), and a fixed trial date, if necessary, established for May 10, 1999, the termination of this rather complex litigation is not too far off.

Counsel for defendant has requested an extension of time to reply to plaintiffs' motion for summary judgment and file its own motion. Counsel for plaintiffs has requested four weeks to respond to defendant's summary judgment motion.

An appropriate order follows.

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	:	
NATIONAL COLLEGIATE	:	
ATHLETIC ASSOCIATION,	:	
Defendant.	:	

ORDER

AND NOW, this 15th day of October, 1998, it is hereby ORDERED that Defendant's Motion to Amend Order to Certify Question for Immediate Appeal (Docket No. 39) is DENIED.

Defendant is directed to file its answer to Plaintiffs' Motion for Summary Judgment and its own summary judgment motion on or before November 18, 1998.

Plaintiffs' response to defendant's summary judgment motion will be due thirty (30) days after defendant's motion has been filed.

IT IS SO ORDERED.

BY THE COURT:

RONALD L. BUCKWALTER, J.