

Compliance Officer, Cynthia Stocker, alleging that the Defendants discriminated against Plaintiff based on sex due to their failure to take appropriate action in response to known incidents of persistent and derogatory name-calling, threats, physical assaults, and harassment of a sexual nature.

2. Plaintiff pled violations of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution, Title IX, one count of negligent supervision, and violations of several provisions of New York Human Rights Laws. On September 10, 2009, Plaintiff filed an amended complaint to perfect his state law claims. The Court's October 9, 2009 Pretrial Scheduling Order provides that discovery closes April 30, 2010 and dispositive motions are not due until June 30, 2010.

3. Rule 24(a)(1) of the Federal Rules of Civil Procedure provides that the court must permit anyone to intervene who is given an unconditional right to intervene by a federal statute.

4. The United States should be granted leave to intervene under Rule 24(a)(1) as Title IX of the Civil Rights Act of 1964, 42 U.S.C. § 2000h-2, grants the United States authority to intervene to seek relief from denials of equal protection if the matter is certified as a matter of general public importance.

5. Under 42 U.S.C. § 2000h-2, the United States is entitled to seek "the same relief as if it had instituted the action." 42 U.S.C. § 2000h-2. This statute therefore provides authority for the United States to intervene as of right and prosecute this case under both the Equal Protection Clause and Title IX because the United States would have sought relief under both statutes if it had instituted the action.

6. The Assistant Attorney General has certified that this case is of general public importance, and the certificate is attached to the complaint-in-intervention.

7. The United States' motion to intervene also is timely as the parties have engaged in minimal discovery, no depositions have been conducted, and the deadline for dispositive motions is June 30, 2010.

8. In the alternative, the United States also meets the standards for intervention as of right under Rule 24(a)(2) and permissive intervention under Rule 24(b).

9. The Second Circuit has developed a four-pronged test for determining whether a party may intervene as of right under Rule 24(a)(2). The party must (1) file a timely motion; (2) demonstrate an interest in the litigation; (3) establish that its interest may be impaired by the disposition of the action; and (4) show that its interest is not adequately protected by the parties to the action. *See Hoblock v. Albany County Bd. of Elections*, 233 F.R.D. 95, 97 (N.D.N.Y. 2005) (quoting *D'Amato v. Deutsche Bank*, 236 F.3d 78, 84 (2d Cir. 2001)). As discussed more fully in the attached Memorandum of Law, the United States satisfies all four requirements for intervention under Rule 24(a)(2).

10. The Court may also grant the United States' motion to intervene pursuant to Rule 24(b). Rule 24(b) allows permissive intervention when an applicant's claim or defense and the main action have a question of law or fact in common. In exercising its discretion, the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

11. Rule 24(b) further provides in part that "[o]n timely motion, the court may permit a federal or state governmental officer or agency to intervene if a party's claim or defense is based on . . . a statute or executive order administered by the officer or agency."

12. This case raises important issues concerning the legal standards to be applied in actions enforcing federal civil rights laws; therefore, it is appropriate that the United States participate in such an action to ensure consistent development of the applicable legal standards.

Wherefore, the United States requests that the Court grant its motion to intervene in this lawsuit, and direct the Clerk to file the attached complaint-in-intervention.

Respectfully Submitted,

RICHARD S. HARTUNIAN
United States Attorney
Northern District of New York

THOMAS E. PEREZ
Assistant Attorney General
Civil Rights Division

/s William F. Larkin
WILLIAM F. LARKIN
Assistant U.S. Attorney
P.O. Box 7198
100 South Clinton Street
Syracuse, NY 13261-7198
Phone: (315) 448-0672
Fax: (315) 448-0689
Bar Number: 102013

AMY I. BERMAN
WHITNEY M. PELLEGRINO
AMANDA M. DOWNS
U.S. Department of Justice
Civil Rights Division
Educational Opportunities Section
950 Pennsylvania Ave, PHB Suite 4300
Washington, DC 20530
Phone: (202) 616-9939
Fax: (202) 514-8337

Dated: January 14, 2010