

- Discrimination
 - Terms and Conditions of Employment
 - Title VII
- Harassment
 - Title VII
 - Title IX
- Retaliation
 - Title IX
 - Damages Issues

Gender Equity /Personnel Issues

Jackson v. Birmingham Bd. of Education

- Supreme Court Decision/Retaliation
- Resolved Circuit Split
- Supreme Court Holding:
 - Retaliation is intentional discrimination on the basis of sex
 - One who witnesses and complains about discrimination is protected from adverse action imposed because of the complaints
 - Coaches, teachers, administrators and students in best position to witness and alert schools
 - Enforcement scheme would unravel if no action for retaliation existed.

Harassment prohibitions:

- Sources of Prohibition
- Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties - Title IX
- Title VII
- State Laws
- School Policies
- 2010 Sexual Harassment/Sexual Assault Guidance
- Mandated Training

Harassment Cases

- Not Just about Sex. . .
 - Sexual Orientation
 - Race, National Origin
 - Religion
 - Disability: Mental and Physical
- Jennings v. UNC
- OCR Revised Guidance
- Complaint Procedure
- Prompt Investigation
- Policies and Procedures

In 1998 a former player, Melissa Jennings, sued Dorrance for sexual harassment. He had just cut her from the team. Initially, it appeared the suit was retaliation against Dorrance. However, Debbie Keller Hill, a former team captain, joined the suit.

In October 2004 U.S. District Court Judge N. Carlton Tilley, Jr. threw out the six-year lawsuit, stating the "behavior at issue does not constitute severe, pervasive and objectively offensive sexual harassment."

In April 2006 a three judge federal appeals panel voted against reversing the judgement (2-1). Jennings appealed to the full court with oral arguments taking place in October 2006. Hill had earlier settled with the university for \$70,000. The 4th U.S. Circuit Court of Appeals, after a rehearing by the full court, vacated summary judgment for defendants in Jennings' lawsuit. The April 9, 2007 decision allowed Jennings to proceed on her

[Title IX claim and on sexual harassment civil rights claims under 42 U.S.C. § 1983 against Dorrance and a university official. Judge M. Blane Michael wrote in the 4th Circuit Court's majority opinion that Dorrance's conduct "went far beyond simple teasing and qualified as sexual harassment."](#)

On October 1, 2007 the U.S. Supreme Court denied a petition by the state Attorney General's Office for the court to hear a nine-year-old sexual harassment suit against UNC-Chapel Hill and its women's soccer coach, Anson Dorrance. The refusal by the Supreme Court to hear the case meant that the 4th U.S. Circuit Court of Appeals ruling from 2007 would stand and the case could proceed to trial. On January 14, 2008 the suit was settled out of court and Melissa Jennings will receive \$385,000.

The university also will review its sexual harassment policies and procedures, and bring in an outside law professor to help. The coach issued a written apology to the player, her family, and team members saying that his comments were inappropriate. The coach also admitted that he did recruit her and got her into the school to play soccer.

Harassment

- **Not Just Sex**
- **Training**
- **Complaint Procedure**
- **Quid Pro Quo**
- **Hostile Environment Harassment**
 - **Inappropriate Behavior**
 - **Unwelcome**
 - **Subjective**
 - **Objective**
 - **Alters Environment**
 - **Totality of the Circumstances**

Definition of Harassment:

- Title IX's prohibition against sexual harassment does not extend to legitimate nonsexual touching or other nonsexual conduct.
 - For example, a high school athletic coach hugging a student who made a goal . . . will not be considered sexual harassment.
 - Similarly, one student's demonstration of a sports maneuver or technique requiring contact with another student will not be considered sexual harassment.
- However, in some circumstances, nonsexual conduct may take on sexual connotations and rise to the level of sexual harassment.
 - For example, a teacher's repeatedly hugging and putting his or her arms around students under inappropriate circumstances could create a hostile environment.

Factors to Consider

- The degree to which the conduct affected one or more students' education
- The type, frequency, and duration of the conduct
- The identity of and relationship between the alleged harasser and the subject or subjects of the harassment.
- The number of individuals involved
- The age and sex of the alleged harasser and the subject or subjects of the harassment
- The size of the school, location of the incidents, and context in which they occurred.
- Other incidents at the school
- Incidents of gender-based, but nonsexual harassment.

Same Sex Sexual Harassment

- Oncale v. Sundowner Offshore Services, Inc., 523 U.S. 75 (1998).
- The guidance clarifies that gender-based harassment, including that predicated on sex-stereotyping, is covered by Title IX if it is sufficiently serious to deny or limit a student's ability to participate in or benefit from the program.

- You think, but you're not sure, that one of your student-athletes is pregnant. Your season is about to start. For those of you in DI and II, she is on scholarship but is a marginal player. Your scholarship allocation is tight.
- What do you do? Scholarship issues?

Pregnant SA

- Helloooooooooo Training Room Staff
- Defined as a protected classification
- Cannot discriminate on basis of pregnancy
- If doctor says can play, can play
- Return to same status prior to “temporary disability”
- Treat the same as others with “temporary disability” with regard to “rehab” and other benefits, etc.
- Scholarship renewal?
- Discussions with press, parents, aunts, uncles, cousins, FOTENK. . . .
- Title IX/Title VII and the Pregnant Coach . . .

Pregnancy and Title IX

- Athletic Departments pride themselves on motivating student-athletes to be the best they can be in their sport and in their life.
- Athletic Departments have difficulty motivating coaches and staff and integrating gender equity concepts into the process.
- Schools need to demand a team oriented approach to equity in sport and in department in goal setting and in performance evaluations.
- Start with your Mission Statement . . .

Integrating Gender Equity into Performance Management:

Mission Statements:

Sample mission statement:

- The Department maintains a strong commitment to the principles of fiscal responsibility, gender equity, diversity and sporting conduct among its coaches, administrative staff and student-athletes. Staff members and student-athletes will adhere to the highest ethical standards and comply with all NCAA, conference, federal, state and institutional rules and regulations. In all of its activities, the Department will provide equitable opportunities for women and minorities.

Exercise:

- Recite your mission statement
- Ask any one of your coaches to articulate the department's mission statement
- Ask members of your SAAC
- Use your mission statement as a framework for the performance management of your department

Quick Tutorial Re: Affirmative Action

What it IS . . .

What it is NOT . . .

Job Advertisements/Invitations to Interview:

- Set the tone from the beginning
- Where are you going to advertise
- Realistic Description of the Job
- Realistic Educational Expectations
- Realistic Experience Expectations
- Include Title IX Officer with EEO Tag Line
- How Do You Sort Through the Responses . . .
- Discussion of sample case. . .

Interviews:

Exercise:

- You are on the hiring committee for a coach of a very high profile men's program.
- How would you ask a question in the interview to test the coach's understanding of and commitment to diversity and gender equity?

Hiring:

Exercise:

- A highly qualified candidate for job in the department has been offered the job.
- She asks you how is the gender equity climate in the department.
- She asks what is your commitment to gender equity.
- How do you answer?

Job Descriptions/Contracts:

Equity Clause

- School X is committed to provide gender equitable competitive opportunities for our student-athletes. Employees are expected to adhere to the department's non-discrimination policy and to work to create an environment free from discrimination for students and staff.

Contract clause

- Employee X understands and agrees that the elements contained in this contract must be in keeping with all established law, including Title IX of the Educational Amendments of 1972. If it is determined that the promises contained in this contract conflict with the mandates of this federal law, both parties agree that the offending provision shall be modified in keeping with applicable law.

Job Descriptions:

- Define Job Expectations Specifically and Generally
- Have Job Descriptions Reflect the Actual Position
- Incorporate Equity Considerations
- All employees are expected to abide by the nondiscrimination policies.
- All employees are expected to report any known instances of discrimination.

Performance Management:

- Incorporate equity into goal setting and everyday expectations
- Share responsibility for departmental integrity
- The performance management process links the mission statement/goals with individual responsibilities.
- Successful goal setting helps employees focus on what needs to be done and how to do it.
- Successful performance management is continuous, articulate and rewards self initiative.
- It challenges the individual to take responsibility for his or her own performance on a daily basis within the framework set by the department.
- It encourages teamwork and group responsibility.

EVALUATIONS:

- Must be tied to the job description/contract
- Must have generalized points and those that are sport specific
- Must require examples to support ratings
- Should have areas that are specific to teamwork within the department
- Include an equity component
 - Knowledgeable of and supportive of department's efforts to provide a nondiscriminatory environment

Institutional Buy In:

- "I'm all for Title IX issues and supporting all the athletes," Stoops said.
- "We must never forget that. As you hear all this stuff with [ESPN](#) (about) paying the athletes, don't ever sacrifice it and take away an opportunity from another student athlete. That's what we're about in the college atmosphere.
- "I love all our women's sports, our wrestling team. Our gymnastics teams do so well. It's really important that you have a lot of diversity on your campus."
- Read more:
<http://newsok.com/ou-caravan-notebook-bob-stoops-says-oklahoma-has-talent-in-every-sport/article/3590846#ixzz1Z4oYJDEd>

Take Aways:

- Institutional Involvement
 - Certification/EADA/Performance
 - OCR on the Move
 - Recent Decisions
- Participation
- Financial Aid
- Laundry List
- Fundraising/Donations/In Kind
- Harassment Avoidance Education
 - Social Networking
 - Hazing
 - Title IX Liability Standard
- Performance Management