

Sexual Harassment and Hazing in Athletics

**NCAA Gender Equity Conference
Women Rock 2006
April 30 – May 2**

Sources of Prohibition

- DOE January 2006 Letter to Institutions**
- Revised Sexual Harassment Guidance:
Harassment of Students by School Employees,
Other Students, or Third Parties - Title IX**
- Title VII**
- State Laws**
- School Policies**

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.

Forms of Harassment

- Quid Pro Quo**
- Hostile Environment Harassment**
 - Inappropriate Behavior**
 - Unwelcome**
 - Subjective**
 - Objective**
 - Alters Environment**
 - Totality of the Circumstances**

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.

Harassment by Coaches and Other School Personnel

- **Gebser v. Lago Vista Independent School District,**
524 U.S. 274 (1998).

- **Facts of the Case**

- **The Court held in Gebser that a school can be liable for monetary damages if:**
 - **a teacher sexually harasses a student,**

 - **an official who has authority to address the harassment has actual knowledge of the harassment, and**

 - **that official is deliberately indifferent in responding to the harassment.**

Student/Student Harassment

- **Davis v. Monroe County Board of Education (Davis), 526 U.S. 629 (1999).**
- **Facts of the Case**
- **In Davis , the Court announced that a school also may be liable for monetary damages if one student sexually harasses another student in the schools program and the conditions of Gebser are met.**

OCR Standard

- **Gebser acknowledged the power of Federal agencies, such as the Department of Education, to "promulgate and enforce requirements that effectuate [Title IX's] nondiscrimination mandate," even in circumstances that would not give rise to a claim for money damages. See, Gebser , 524 U.S. at 292.**
- **OCR standard not as strict as Court.**

Same Sex Sexual Harassment

- **Oncale v. Sundowner Offshore Services, Inc. (Oncale), 523 U.S. 75 (1998) (a sexual harassment case decided under Title VII).**
- **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.**

Gender-based Harassment

Including Harassment Predicated on Sex-stereotyping

- It can be discrimination on the basis of sex to harass a student on the basis of the victim's failure to conform to stereotyped notions of masculinity and femininity.**
- Although this type of harassment is not covered by the guidance, if it is sufficiently serious, gender-based harassment is a school's responsibility, and the same standards generally will apply.**

Sexual Orientation Harassment

- **Title IX does not prohibit discrimination on the basis of sexual orientation.**

 - **Sexual harassment directed at gay or lesbian students that is sufficiently serious to limit or deny a student's ability to participate in or benefit from the school's program constitutes sexual harassment prohibited by Title IX under the circumstances described in the guidance.**
 - For example, if a male student or a group of male students target a gay student for physical sexual advances, serious enough to deny or limit the victim's ability to participate in or benefit from the school's program, the school would need to respond promptly and effectively, as described in this guidance, just as it would if the victim were heterosexual.

 - On the other hand, if students heckle another student with comments based on the student's sexual orientation (e.g., "gay students are not welcome at this table in the cafeteria"), but their actions do not involve conduct of a sexual nature, their actions would not be sexual harassment covered by Title IX.
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Effective Response

- A school has a responsibility to respond promptly and effectively to sexual harassment.**
- In the case of harassment by teachers or other employees, the nature of this responsibility depends in part on whether the harassment occurred in the context of the employee's provision of aid, benefits, or services to students.**

Grievance Procedures

- **OCR has identified a number of elements in evaluating whether a school's grievance procedures are prompt and equitable, including whether the procedures provide for**
 - Notice to students, parents of elementary and secondary students, and employees of the procedure, including where complaints may be filed;
 - Application of the procedure to complaints alleging harassment carried out by employees, other students, or third parties;
 - Adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence;
 - Designated and reasonably prompt timeframes for the major stages of the complaint process;
 - Notice to the parties of the outcome of the complaint; and
 - An assurance that the school will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate.
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Hazing

- ❑ www.stophazing.org
- ❑ **More than 40 states have laws on the books regarding hazing.**
- ❑ **Schools policies must conform to laws.**

Training

- Funding available through EEO Office.**

- Effective training needs to incorporate actual athletic cases and consequences.**
 - Coaches**
 - Student-Athletes**
 - Administration**