

**SEXUAL HARASSMENT  
IN THE CONTEXT OF ATHLETICS**



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## I. INTRODUCTION

The vast majority of sexual harassment claims are brought under Title VII of the Federal Civil Rights Act of 1964, which provides that “it shall be an unlawful practice for an employer... to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin.”<sup>1</sup> The scope and magnitude of the Act in the context of sexual harassment are not immediately apparent from the relatively vague and general language therein. However, the Supreme Court of the United States has held that violations of Title VII prohibiting sex discrimination in employment can be established by proving that discrimination based on sex has created a hostile or abusive work environment.<sup>2</sup> The Vinson Court stated that for a violation of Title VII to occur in this context, the harassment must be “sufficiently severe or pervasive to alter conditions of the victim's employment and create an abusive working environment.”<sup>3</sup>

In addition, the guarantee of employees to be free from discrimination has also been extended to the right to education free of discrimination under Title IX of the Education Amendments Act of 1972.<sup>4</sup> The Supreme Court has recognized that students can recover under Title IX for sexual harassment inflicted on them by teachers.<sup>5</sup> Courts have also held that the sexual harassment by teachers, in any form of intentional discrimination (such as the demand for sexual favors, or creation of a hostile work environment) can be imputed to the school district under respondeat superior principles.<sup>6</sup> A school board may also be liable under Title IX for deliberate indifference to student-on-student sexual harassment occurring during school hours and on school grounds when the harassment is severe enough to effectively bar the victim’s access to an educational opportunity.<sup>7</sup>

The United States Equal Employment Opportunity Commission (EEOC) is the federal agency that enforces sexual harassment laws. The EEOC have produced a set of guidelines defining and illustrating sexual harassment, available in the Code of Federal Regulations at 29 C.F.R. § 1604.11. The EEOC defines sexual harassment as “unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature... when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual (i.e. “quid pro quo harassment”), or (3) such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile, or offensive working environment.” (i.e. “hostile environment harassment”)<sup>8</sup> The Supreme Court has established that both quid pro quo and hostile environment harassment are actionable under Title VII.<sup>9</sup> While quid pro quo harassment is by and large patently obvious sexual harassment, the hostile environment harassment cases are often considerably more difficult to prove. As one court noted, “the distinction between invited, uninvited-but-welcome, offensive-but-tolerated, and flatly rejected” sexual advances are often difficult to discern in reality.<sup>10</sup> It is these difficulties and ambiguities that make this issue so controversial and taboo.

The context of athletics creates an entirely unique set of concerns because of the circumstances and relationships inherent in sports. For example, some behavior that would almost certainly be deemed inappropriate in the classroom setting is perfectly acceptable in the sports arena.<sup>11</sup> The amount of physical contact, the power relationship between athletes and their coaches and employers (or perhaps athletic department officials), and the importance of an athlete’s body in the athletic context all generate an atmosphere where opportunity for improper

sexual conduct is enhanced.<sup>12</sup> Thus, the issue of sexual harassment in intercollegiate athletics is very real and very pertinent in the modern era, yet also an extremely sensitive topic to explore.

## **II. DISCUSSION – ISSUES IN THE COLLEGE ATHLETIC CONTEXT**

### **A. WHAT IF YOU KNOW INAPPROPRIATE BEHAVIOR IS OCCURRING?**

As an employee of a larger institution, an athletic trainer or employee of the athletic department has an affirmative duty to report such behavior in accordance with the guidelines on discrimination in the context of sexual harassment enumerated in the Code of Federal Regulations. According to the Code, “with respect to conduct between fellow employees, an employer is responsible for acts of sexual harassment in the workplace where the employer (or its agents or supervisory employees) knows or should have known of the conduct, unless it can show that it took immediate and appropriate corrective action.<sup>13</sup> The Supreme Court has affirmed this, holding that an employer is vicariously liable for actionable discrimination caused by a supervisor when the employer fails to use reasonable care to prevent it from occurring or take corrective or preventive measures to avoid the harm.<sup>14</sup> An employer has vicarious liability under Title VII even when a supervisor creates a hostile work environment by making explicit threats to alter a subordinate's terms or conditions of employment, based on sex, but does not actually fulfill the threat.<sup>15</sup>

When an employer does attempt to take corrective measures, the reasonableness of an employer's attempts to rectify its supervisor's harassment under Title VII, is measured against its fulfillment of its duty to exercise reasonable care to prevent and correct promptly any sexually harassing behavior.<sup>16</sup> In determining whether alleged conduct constitutes sexual harassment, the EEOC will look at the “totality of the circumstances” as a whole, including the nature of the

sexual advances and the context in which they occurred and make the determination from the facts on a case by case basis.<sup>17</sup>

One important element that employers must provide in order to avoid a finding of hostile environment sexual harassment is a “reasonable avenue for complaint” for employees and personnel.<sup>18</sup> Failure to do so will result in liability under Title VII.<sup>19</sup> An effective grievance procedure, one that is known to the victim and timely stops the supervisor's sexual harassment, shields the employer from Title VII liability for its supervisor's hostile environment sexual harassment.<sup>20</sup> An example of where a court ruled that an antiharassment policy was effective to shield a defendant employer from liability was an employer who maintained a sexual harassment policy in the readily available employee handbook in its personnel office, had complaint procedures requiring that complaints of harassment be investigated by the personnel director, required a detailed report of the sexual harassment complaint be prepared and include recommendations and findings, and had an anti-sexual harassment training program which every employee was required to attend.<sup>21</sup> An employer who puts into place a comprehensive anti-harassment policy complete with formal mechanisms for lodging complaints and conducts sexual harassment training sessions is acting with reasonable care to prevent sexual harassing behavior.<sup>22</sup>

The analysis as it pertains to schools and institutions is similar to that of an employer. Liability against a school that receives Title IX funding for student-on-student sexual harassment is limited to cases in which the school acts with deliberate indifference to known acts of harassment, and those acts have a systemic effect on educational programs and activities.<sup>23</sup> As Title IX liability pertains to colleges and universities, liability, based on student-on-student sexual harassment, arises only where its own deliberate indifference effectively causes

discrimination, and the acts are so severe and pervasive that the victims are deprived of access to educational benefits provided by the school.<sup>24</sup>

## B. CLAIMS FROM STUDENTS.

Once an employer has an effective anti-harassment policy and grievance procedure in place, it is up to the alleged victims of sexual harassment to utilize the mechanisms in place. The Supreme Court has found that an employee has a duty to reasonably take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise.<sup>25</sup> For example, a demonstration that an employee failed to use a complaint procedure provided by the employer in response to sexual harassment by a supervisor will normally suffice to satisfy the employer's burden of demonstrating a lack of reasonable care by the employee to avoid harm.<sup>26</sup>

Differentiating meritorious claims of harassment from exaggerated or phony claims based on improper motives or differences in perception is one of the most difficult elements of sexual harassment. The screening process can be extraordinarily difficult, which is another reason that every college, university, or employer should have personnel trained in sexual harassment management handling all complaints. Courts have established that in order to establish a viable hostile environment claim under Title VII, the alleged victim must show evidence permitting an inference both that a reasonable person would have perceived the environment as abusive and that he or she actually experienced it as such.<sup>27</sup> Thus, there must be both an objective aspect of reasonableness and a subjective element of individual perception in order to constitute a meritorious claim. Also, avoid stereotypical ideas about sexual harassment, as Title VII's prohibition of discrimination "because of sex" protects men as well as women.<sup>28</sup>

One case that received a large amount of media attention was a suit brought by two former University of North Carolina women's soccer players against the university, head coach

Anson Dorrance, three assistant coaches, as well as the athletic trainer and several members of the athletic department.<sup>29</sup> The Court in that case ruled that the allegations by the players of “unwelcome sexual harassment” creating a “hostile environment” and that the university failed to take preventive action in response to repeated complaints of harassment was enough evidence that if established would create liability under Title IX against the University and the coaching staff who was in a supervisory position.<sup>30</sup> The court also held that the player's allegations that the coach made uninvited sexual advances towards her and repeatedly telephoned and e-mailed her for the purpose of harassing her and monitoring her activities, were sufficient to allege severe, pervasive, and objectively offensive conduct, as required to state Title IX claim against university.<sup>31</sup> The case was partially settled as to one of the players, who reportedly agreed to drop the charges against Dorrance in exchange for the University paying her \$70,000 and initiating several mandated programs, including required instruction for varsity athletes on their rights and obligations under the school's existing sexual harassment policy, and also for Coach Dorrance to undergo annual sensitivity training.<sup>32</sup> The case as to the other player is still pending and the trial is anticipated in October, which could potentially be a landmark case in this area.<sup>33</sup>

The most visible illustrations of this issue involve two very highly publicized student complaints in the last year in the context of intercollegiate athletics. In 2003, Peyton Manning reportedly settled out of court for \$300,000 with a former female athletic trainer at the University of Tennessee who alleged that Manning dropped his pants in front of her while he was a football player at the University.<sup>34</sup> Most recently, a University of Colorado student sued the University for alleged indifference toward sexual harassment within the athletic department in violation of Title IX allegedly leading to sexual assault of against the student by recruits of the football program.<sup>35</sup> Although the case is in the early stages, its impact on the recruiting process

at major universities across America could be significant if a court were to rule that the overall environment at a school can serve as actual notice of sexual harassment.<sup>36</sup> This could likely lead to analogous suits at many other universities where student-athletes have been accused of sexual misconduct. Ken Marcus, who oversees the federal Office for Civil Rights says that the Colorado scandal has only heightened his office's alert for claims of sexual harassment.<sup>37</sup>

### C. EMPLOYEES OR STAFF DATING INTERNALLY.

Due to the nature of intercollegiate athletics today resembling a full-time job more than merely an activity, players are in almost constant contact with coaches, athletic department officials, and athletic trainers. These relationships naturally become closer and more familiar due to the proximity and frequency of connection. It is becoming fairly common to see athletes dating coaches or athletic personnel, and several high profile athletes have actually married their former coaches such as soccer star Brandi Chastain (to former Santa Clara coach Jerry Smith) and Jackie Joyner Kersee (to her coach at UCLA Bob Kersee) Many athletic organizations already categorically forbid romantic relationships between coaches and athletes they supervise.<sup>38</sup> All major sports foundations internationally take the position that romantic and/or sexual relations between coaches and athletes are an abuse of power.<sup>39</sup> Many schools have even adopted blanket prohibitions against romantic relationships between all employees and students they oversee.<sup>40</sup> As is explained in one college's student handbook, "voluntary consent by the student in such a relationship is suspect, given the fundamental nature of the relationship."<sup>41</sup> Thus, a universal prohibition for all persons who have professional responsibility over students seems to be a common trend among universities.

As for undergraduate students working in the training room or athletic department, there is a distinct difference in the relationship as the discrepancies in power and status are not so

acute between peers. Although these students hold positions of some authority, the opportunities to abuse power and affect the position of student-athletes is considerably more limited. The lines are often blurred here with differences between perception and reality, and there have been very few cases dealing with these issues.

#### D. SPECIFIC ACTIONS OF ENFORCEMENT.

The first step to properly and effectively manage situations which are more likely to lead to sexual harassment issues is to formulate the proper university policy and formalize it in a university handbook or code of policy. Student handbooks have been upheld as a legitimate contractual source of terms defining reciprocal rights and obligations of a university and its students.<sup>42</sup> In other words, students can be contractually obligated to follow the rules and regulations enumerated in such codes of conduct and penalized accordingly if they fail to meet those guidelines.

For employees, the ability to monitor and restrict behavior based on enumerated codes of conduct is less apparent. Although an important statement of policy, states are divided as to whether and under what circumstances terms and provisions in employee handbooks are enforceable as part of a valid employment contract.<sup>43</sup> Under the laws of many states, if workers are hired without an express term for duration of employment, they are presumed to be at will employees.<sup>44</sup> An employee-at-will can be terminated at the will of either party regardless of the quality of performance of the employee.<sup>45</sup> Thus, many employees who knowingly violate a provision of a school's code of conduct can likely be fired without fear of repercussions, especially if it is for behavior that borders on or suggests sexual harassment or abuse of power.

Firing an employee who has been hired for an express term (or a tenured employee in the university context) is considerably more difficult, as an employer must show proper cause.

Generally, good cause connotes a fair and honest cause or reason for dismissal applied in good faith on the part of the employer.<sup>46</sup> It is basically a factually oriented matter of interpretation for a court or arbitrator to determine. Included under the umbrella of “good cause” is the improper conduct of an employee. The majority of jurisdictions hold that an employer’s termination of an employee is proper where the employee had a good faith belief supported by substantial evidence that the employee engaged in sexual harassment, even if good cause is required.<sup>47</sup> Thus, employers need “a reasoned conclusion supported by substantial evidence gathered through an adequate investigation that includes notice of the claimed misconduct and a chance for the employee to respond” before terminating such an employee.<sup>48</sup>

Christopher Parent, a Denver attorney who specializes in sports law, stated that “only by taking aggressive steps to manage the problem of sexual assault on campus, particularly in instances where a member of an athletic team is involved, can a university or college insulate itself” from Title IX sexual harassment suits.<sup>49</sup> At the same time, it is absolutely critical to provide due process to those accused of harassment.<sup>50</sup> The American Association of University Professors (“AAUP”) stresses that complaints should be handled in accordance with a well-publicized grievance process that provides a sense of uniformity and fairness, but without sacrificing the confidentiality of the parties involved.<sup>51</sup>

#### E. HIRING OR ASSIGNING BASED ON GENDER.

Federal statutory law prohibits employers from refusing to hire or discharging an individual or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, or limit, segregate, or classify employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his or her status as an employee, because

of such individual's gender.<sup>52</sup> The EEOC asserts that under Title VII it is illegal to discriminate in any aspect of employment, including “compensation, assignment, or classification of employees.”<sup>53</sup>

Employers often attempt to justify a work assignment based on gender under a Title VII challenge by invoking the bona fide occupational qualification (“BFOQ”) exception of the statute.<sup>54</sup> This exception suggests that gender is a BFOQ of the specific work that the position or assignment requires, and that safety reasons for the employee and the public interest at large warrant the use of the discriminatory practice. Courts have held that a BFOQ must be based upon a legitimate safety rationale and must have more than a minimal contribution to safety.<sup>55</sup> In addition, customer and coworker preference have also been rejected as a defense under this exception in transfer and assignment discrimination claims.<sup>56</sup> Thus, it is unlikely that restricting members of one gender from covering the sport of another gender would have a legitimate safety foundation as to be considered a BFOQ.

An example of this occurred when Bowie Kuhn, then Commissioner of Baseball, attempted to ban female reporters from the clubhouse at Yankee Stadium based upon gender. The Court ruled that the action taken was not substantially related to the privacy of the players or any legitimate safety concern and simply served to deprive women sportswriters the right to pursue their profession in accordance with the Fourteenth Amendment.<sup>57</sup> This highlights the principle that there is no lawful justification for restricting one gender from covering a team of another gender based solely on the basis of sex.

The prevalence today of women reporters covering men’s sports is evident in almost every media form, such as Hannah Storm’s on-court reporting for the NBA. The intermixing of genders is also commonplace in coaching, such as Geno Auriemma’s success leading the

University of Connecticut Lady Huskies basketball team. Even in athletic training, females are gaining employment in the male dominant world of professional football, such as in the case of Ariko Iso who was hired as the first full-time female athletic trainer in the NFL in 2002. As these longstanding gender barriers slowly break down in athletics, communication, understanding, and mutual respect will increase as a result and the problems with sexual harassment in this milieu will hopefully evaporate.

#### F. PREVENTION/REDUCTION OF HARASSMENT.

Many of the illustrations above provide employers with a basic roadmap of what to do, and just as importantly, what not to do. As Susan B. Garland suggested in her article entitled “A Corporate Tip Sheet on Sexual Harassment”, in order to avoid liability under Title VII for the sexual harassing conduct of supervisors, employers must develop a zero-tolerance policy on harassment, communicate it to employees, and ensure that victims can report abuses without fear of retaliation.<sup>58</sup> Garland stressed that companies should publicize their anti-harassment policies as aggressively and regularly as possible--in handbooks, on posters, in training sessions, and in reminders in paychecks, and line supervisors and employees should be given real-life examples of what could constitute offensive conduct<sup>59</sup> Employers should designate several managers to take complaints, so that employees don't find themselves reporting to their immediate supervisor (very often the abuser), and managers should be trained in sexual-harassment issues, and punishment against harassers should be swift and sure.<sup>60</sup> This duty is not ubiquitous however, as employers do not have to closely monitor the day-to-day activities of every supervisor ever accused of sexual harassment in order to avoid Title VII liability for hostile work environment claims; rather, a strong, serious reprimand often will qualify as prompt remedial action.<sup>61</sup>

One of the obvious keys to any professional relationship is communication. In the context of athletics and training, with the problems between perception and reality and the impossibility of concrete definitions in this setting, creating a department free of sexual harassment requires an athletic director or trainer to set unmistakable expectations upfront for all student-athletes. Included in this relationship must be an acknowledgment of the specific boundaries of professionalism that coaches, athletic trainers, and athletic staff must maintain in connection with athletes<sup>62</sup>.

As the Supreme Court has acknowledged, the underlying purpose of Title VII is “to encourage the creation of anti-harassment policies and effective grievance mechanisms.”<sup>63</sup> Many scholars agree that some important steps that institutional leaders must take to this end are: (1) carefully drafted definitions of what constitutes sexual harassment and clear policies that prohibit such actions; (2) accessible grievance procedures that are communicated to and understood by all members of the academic community; and (3) ongoing efforts to educate the campus community about the nature of sexual harassment and its destructive impact within the community.<sup>64</sup>

An illustration of a basic sexual harassment policy for athletic departments is provided in the attached Marquette Law Review Article on page 8.<sup>65</sup> It provides a basic framework as to what a university should cover to most effectively protect itself from sexual harassment claims under Title VII or Title IX.

## ENDNOTES

<sup>1</sup> 42 U.S.C. 2000e.

<sup>2</sup> Meritor Savings Bank, FSB v. Vinson, 106 S.Ct. 2399 (1986)

<sup>3</sup> Id. at 2405.

<sup>4</sup> 20 U.S.C. § 1681

<sup>5</sup> Franklin v. Gwinett County Pub. Sch., 503 U.S. 60 (1992)

<sup>6</sup> Bolon v. Rolla Pub. Sch., 917 F.Supp. 1423 (E.D.Mo. 1996)

<sup>7</sup> Davis v. Monroe County Bd. of Educ., 526 U.S. 629 (1999)

<sup>8</sup> 29 C.F.A. § 1604.11(a) (2003)

<sup>9</sup> Vinson, S.Ct. at 2406

<sup>10</sup> Barnes v. Costle, 561 F.2d 983, 999 (D.C. Cir. 1977)

<sup>11</sup> Oncale v. Sundowner Offshore Services, Inc., 118 S.Ct 998 (1998)

<sup>12</sup> 13 Marq. Sports L. Rev. 173 (2003)

<sup>13</sup> 29 C.F.A. § 1604.11(d)

<sup>14</sup> Burlington Industries, Inc. v. Ellerth, 524 U.S. 742 (1998)

<sup>15</sup> Id.

<sup>16</sup> Faragher v. City of Boca Raton, 524 U.S. 775 (1998)

<sup>17</sup> 29 C.F.A. § 1604.11(b)

<sup>18</sup> O'Rourke v. City of Providence, 235 F.3d 713 (1<sup>st</sup> Cir. 2001)

<sup>19</sup> Id.

<sup>20</sup> Faragher, 524 U.S. 775 (1998)

<sup>21</sup> DeWitt v. Lieberman, 1999 WL 13236 (S.D.N.Y. 1999)

<sup>22</sup> Newsome v. Administrative Offices of Courts of State of New Jersey, 103 F.Supp.2d 807 (D.N.J. 2000)

<sup>23</sup> Saxe v. State College Area School Dist., 240 F.3d 200 (3d Cir. 2001)

<sup>24</sup> Benfield ex rel. Benfield v. Board of Trustees of University of Alabama at Birmingham, 214 F.Supp.2d 1212 (N.D.Ala. 2002).

<sup>25</sup> Faragher, 524 U.S. 775 (1998)

<sup>26</sup> Id.

<sup>27</sup> Doe by Doe v. City of Belleville, Ill., 119 F.3d 563 (7<sup>th</sup> Cir. 1997)

<sup>28</sup> Oncale v. Sundowner Offshore Services, Inc., 118 S.Ct 998 (1998)

<sup>29</sup> Jennings v. University of North Carolina at Chapel Hill, 240 F.Supp.2d 492 (M.D.N.C. 2002)

<sup>30</sup> Id. at 502

<sup>31</sup> Id. at 510

<sup>32</sup> The Daily Tarheel, Mar. 24, 2004 at 1.

<sup>33</sup> Id.

<sup>34</sup> Mike Chappell, U.S.A. Today, Dec. 25, 2003

<sup>35</sup> Simpson v. University of Colorado, 220 F.R.D. 354 (D.Colo. 2004).

<sup>36</sup> Erik Brady, U.S.A. Today, May 27, 2004

<sup>37</sup> Id.

<sup>38</sup> See Leslie Heywood, Backtalk: Female Harassment is Still Widespread in Sports, N.Y. Times, Nov. 8, 1998 at 11.

<sup>39</sup> Id.

<sup>40</sup> For an example, See The College of William and Mary, College Policies: Policy on Consensual Amorous Relationships

<sup>41</sup> Gettysburg College, Student Handbook, "Consensual Sexual or Romantic Relationships"

<sup>42</sup> Dinu v. President and Fellows of Harvard College, 56 F.Supp.2d 129 (D.Mass. 1999).

<sup>43</sup> See Landers v. National R.R. Passenger Corp., 345 F.3d 669 (C.A.8 Minn. 2003), Norman v. Tradewinds Airlines, Inc., 286 F.Supp.2d 575 (M.D.N.C. 2003)

<sup>44</sup> See Bailey v. Synthes, 295 F.Supp.2d 344 (S.D.N.Y. 2003), Austin v. Howard University, 267 F.Supp.2d 22 (D.D.C. 2003).

<sup>45</sup> Disher v. Weaver, 308 F.Supp.2d 614 (M.D.N.C. 2004).

<sup>46</sup> Pugh v. See's Candies, Inc., 116 Cal.App.3d. 311 (1<sup>st</sup> Dist. 1981).

<sup>47</sup> Almada v. Allstate Ins. Co., Inc., 153 F.Supp.2d 1108 (D.Ariz. 2000).

<sup>48</sup> Id. at 1114, see Cotran v. Rollins, Hudig, Hall Int'l, Inc., 948 P.2d 412, 422 (Cal. 1998)

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- <sup>49</sup> Christopher Parent, *Fordham Intellectual Property, Media & Entertainment Law Journal* (2003)
- <sup>50</sup> *Federal Register* 62 (13 March 1997): 12034, at 12045
- <sup>51</sup> American Association of University Professors, Suggested Policy and Procedures for Handling Complaints, <<http://www.aaup.org/statements/Redbook/rbsexha.htm#2>>
- <sup>52</sup> 42 U.S.C. § 2000e-2(a)
- <sup>53</sup> see [www.eeoc.gov](http://www.eeoc.gov), “Discriminatory Practices”
- <sup>54</sup> 42 U.S.C. § 2000e-2(a)
- <sup>55</sup> Levin v. Delta Air Lines, Inc., 730 A.2d 994 (5<sup>th</sup> Cir. 1984).
- <sup>56</sup> Bollenbach v. Board of Educ. of Monroe-Woodbury Cent. School Dist., 659 F.Supp. 1450 (S.D.N.Y. 1987).
- <sup>57</sup> Ludtke v. Kuhn, 461 F.Supp 86 (D.C.N.Y. 1978).
- <sup>58</sup> 7/13/98 Business Week 39, 1998 WL 8133126
- <sup>59</sup> Id.
- <sup>60</sup> Id.
- <sup>61</sup> Fowler v. Sunrise Carpet Industries, Inc., 911 F.Supp. 1560 (N.D.Ga. 1996).
- <sup>62</sup> Vern Seefeldt, Ph.D. “Understanding Sexual Harassment and the Abuse of Power in Athletic Settings”, <<http://ed-web3.educ.msu.edu/ysi/spotlightfall98/understandsex.htm>>
- <sup>63</sup> Burlington Industries, Inc. v. Ellerth, 524 U.S. at 764 (1998)
- <sup>64</sup> Robert O. Riggs, et al., “Sexual Harassment in Higher Education, From Conflict to Community”, ERIC Clearinghouse on Higher Education, <<http://www.ericfacility.net/ericdigests/ed364134.html>>
- <sup>65</sup> Several portions of this sexual harassment policy were written by Mary Ann Oakley at Holland & Knight, LLP.