



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
ATLANTA OFFICE, SOUTHERN DIVISION
61 FORSYTH STREET, SW
SUITE 19T70
ATLANTA, GEORGIA 30303

DEC 20 2002

Dr. Paul E. Stanton, Jr.
President
East Tennessee State University
P. O. Box 70721
Johnson City, Tennessee 37614-0734

Dear Dr. Stanton:

Re: Complaints #04-02-2101 and #04-02-2092

The U. S. Department of Education (Department), Office for Civil Rights (OCR) has completed its investigation of the above-referenced complaints filed against East Tennessee State University (University) alleging discrimination on the basis sex. Specifically, the complainants (b)(7)(C) and (b)(7)(C) alleged that they were subjected to sexual harassment by a coach of the female track team, (b)(7)(C) (track coach) and that when they complained about his conduct to the Head Track and Field Coach, (b)(7)(C) (head coach), they were terminated from the track team and the University.

As a recipient of Federal financial assistance from the Department, the University is subject to the provisions of Title IX of the Education Amendments of 1972 (Title IX), as amended, 20 U.S.C. Sections 1681 et seq., and its implementing regulation, 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in programs and activities receiving Federal financial assistance from the Department. Accordingly, OCR has jurisdiction over this complaint.

Allegation #1 – Sexual Harassment

The Title IX regulation prohibitions against discrimination are not limited to official policies and practices governing school programs and activities. A school also engages in sex-based discrimination if its employees, in the context of carrying out their day-to-day job responsibilities for providing aid, benefits, or services to students (such as teaching, counseling, supervising, and advising students) deny or limit a student's ability to participate in or benefit from the school program on the basis of sex. Under the Title IX regulations, the school is responsible for discrimination in these cases, whether or not it knew or should have known about it, because the discrimination occurred as part of the school's undertaking to provide nondiscriminatory aid, benefits, and services to students.

When students who are participating in a program or activity operated by an educational institution are subjected to sexual harassment that constitutes a sexually hostile environment, they are being limited in the enjoyment of a right on the basis of sex or they are receiving treatment that is different from others on the basis of sex. OCR generally defines sexual harassment as consisting of unwelcome sexual advances, requests for sexual favors, other verbal or physical conduct of a sexual nature, imposed on the basis of sex, that denies, limits, or provides different aid, benefits, services or opportunities protected under Title IX, or conditions the provision of such aid, benefits, services, or opportunities. There are two types of

sexual harassment prohibited by Title IX: (1) "quid pro quo" sexual harassment, where a student's entitlement to, or enjoyment of, an educational or employment benefit is explicitly or implicitly conditioned upon that student's submission to sexual advances, requests for sexual favors, or other sexually based or physical conduct; and (2) "hostile environment" sexual harassment, where unwelcome sexual advances, requests for sexual favors, or other sexually based verbal or physical conduct has the effect of interfering with the student's education or employment by creating an intimidating, hostile, or offensive educational or work environment. The latter form of sexual harassment is at issue in this case.

In determining the University's compliance with the Title IX regulation, OCR collected and analyzed information to establish: (1) Whether the complainants were subjected to a sexually hostile environment, which involves determinations as to (a) whether there was sexual harassment, and (b) if so, whether the sexual harassment was sufficiently severe, persistent, or pervasive as to interfere with or limit the ability of the students to participate in or benefit from the services, activities or privileges by the University; (2) Whether the University had or should have had notice of the harassment; (3) Whether the University took prompt and effective action to stop the sexual harassment after it had notice of the harassment; and (4) Whether the University took prompt and effective action to remedy any discriminatory effects caused by the sexual harassment.

Based on an analysis of the evidence gathered, OCR has concluded that a sexually hostile environment existed and that the University had notice of the sexually harassing conduct, which violated the regulation implementing Title IX. However, by the time OCR conducted its investigation, the University had already taken corrective action to end the sexual harassment, prevent its recurrence and remedy its effects. OCR, therefore, concludes that the University has appropriately resolved this issue. The bases for our determination are outlined below.

The complainants specifically alleged that the track coach regularly made telephone calls to their dormitory rooms and made inappropriate comments of a sexual nature, discussed his personal sexual relationships, addressed them by affectionate terms, and that he often touched and rubbed their shoulders when they visited his office. The complainants contended that they complained to the track coach that his conduct was offensive, but that they did not file a formal sexual harassment complaint with the University. The complainants indicated, however, that they made an oral complaint to the head coach about the track coach's conduct on February 13, 2002, and that they provided to him, as evidence of the track coach's conduct, copies of e-mails the track coach and another female athlete had sent to each other.

OCR considers a variety of related factors to determine if a hostile environment has been created, i.e., if sexually harassing conduct by an employee is sufficiently serious that it denies or limits a student's ability to participate in or benefit from the school's program based on sex. OCR considers the conduct from both subjective and objective perspective. In evaluating the severity and pervasiveness of the conduct, OCR considers all relevant circumstance, i.e., the constellation of surrounding circumstances, expectations and relationships. The factor considered in this case, involving allegations of the sexual harassment of students by a University employee, is the identity of and relationship between the alleged harasser and the subjects of the harassment. For example, due to the power a professor or teacher has over a student, sexually based conduct by that person toward a student is more likely to create a hostile environment than similar conduct by a student.

A review of the contents of the e-mail messages between the track coach and a female student, who was also on the track team, supported the complainants' allegation that the track coach's conduct would be considered sexual harassment. These e-mails, which were exchanged during the fall and winter semesters, clearly established that the track coach had pursued a romantic relationship with one of his female athletes. These messages also contained information indicating that track coach's overtures were not initially welcomed by this student, that the relationship which eventually developed resulted in different

treatment for this student that had a negative impact on the Track program, and that the e-mail messages contained negative comments about the complainants. One of these e-mail messages also included information that appears to support the allegation that the track coach discussed a past romantic relationship with one of the complainants. Further, the University's letter of termination to the track coach confirmed that there was sufficient evidence that he had engaged in inappropriate and sexually harassing conduct with students. Based on these findings, OCR concluded that the sexual conduct engaged in by the track coach was sufficiently severe, pervasive and persistent as to interfere with the complainants' ability to participate in the University's athletic program on a nondiscriminatory basis and to constitute a sexually hostile environment in violation of the regulation implementing Title IX at 34 C.F.R. Section 106.31 (a), which generally prohibits sex discrimination in education program and activities.

We determined, however, that by immediately terminating the track coach on February 14, 2002, and providing counseling services to the student athlete that was directly involved with the track coach, the University took prompt and effective steps to end the sexual harassment, prevent its recurrence and remedy its effects. While the University did not provide counseling to other students on the track team, our interviews with other track team participants did not indicate that such services were necessary. In addition to this, the University conducted a specific workshop on sexual harassment for employees in the Athletics department on March 13, 2002. OCR also determined that the University has adequately published effective grievance procedures for the prompt and equitable resolution of complaints of sexual harassment and published information about its Title IX coordinator in compliance with the Title IX implementing regulation at 34 C.F.R. Section 106.8 (a) and (b).

Allegation #2 - Retaliation

The complainants also alleged that in retaliation for their report of the track coach's conduct, they were suspended from the track team and subsequently terminated from the University.

The regulation implementing Title VI at 34 C.F.R. Section 100.7(e) states that no recipient or other person shall intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title VI or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under this part. The Title IX regulation at 34 C.F.R. Section 106.71 incorporates by reference this provision of Title VI.

To establish retaliation, OCR must determine whether: (1) the individual engaged in a protected activity, (2) the recipient was aware of the protected activity, (3) the recipient took adverse action against the individual, (4) there was a causal connection between the adverse action and the protected activity, and (5) the recipient cannot show legitimate, nondiscriminatory reasons for its action. Based on our investigation, we found insufficient evidence to support that the complainants were subjected to retaliation. Our findings regarding this issue are set forth below.

The complainants engaged in protected activities when they reported the track coach's conduct to the head coach on February 13, 2002. While the University acknowledged that the complainants reported the sexually harassing conduct and that they were suspended from the track team, evidence regarding this adverse action showed that the complainants were suspended on February 11, 2002, prior to the time they made their formal report to the head coach. Based on these facts, the complainants were subjected to the adverse action prior to the time they engaged in the protected activities, and there was no causal connection between the adverse action and the protected activity. We also determined that the complainants were suspended for missing classes, practice sessions and a track meet during the period of February 8-10, 2002. Although the complainants contend that they were actually suspended because of input from the track coach, after he overheard them discussing the e-mails during a practice session prior

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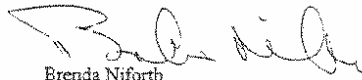
to February 11, 2002, information from the University supported that both the complainants had missed previous practice sessions. In fact, both complainants had signed a statement acknowledging that missing one more practice for reasons not related to schoolwork would result in being dismissed from the team. They signed this statement on November 26, 2002. In addition to this, the other two students that the complainants named as being treated differently indicated that they had not been absent from the University during the period of February 8-10, 2002.

The evidence also showed that the complainants were not terminated from the University, but that (b)(7)(C) resigned and that (b)(7)(C) remained enrolled until the end of the school year. On March 18, 2002, the head coach offered to reinstate both complainants to the track team, with the condition that they sign a reinstatement agreement. (b)(7)(C) initially signed the agreement, was reinstated, but subsequently resigned. On March 19, 2002, (b)(7)(C) submitted a letter to the head coach indicating that she wished to withdraw from the track team and stating her belief that the signed agreement was designed to silence her for reporting the track coach's sexually harassing conduct. A review of the reinstatement agreement, however, showed that the terms outlined for reinstatement were similar to an original statement of compliance, which all athletes are required to sign at the beginning of a school year. (b)(7)(C) signed a similar statement of compliance on June 29, 2001, and (b)(7)(C) signed the same statement on July 17, 2001. (b)(7)(C) reportedly picked up the statement of agreement, but did not sign nor return it to the head coach and was subsequently terminated from the track team on March 25, 2002.

In addition to this, we found that (b)(7)(C) was also involved in a confrontation with the newly assigned coach of the track team on March 19, 2002, and that both complainants were reported to the campus police on March 20, 2002, for allegedly harassing two fellow teammates by throwing rocks at their windows and using profane language. Although both complainants were officially deleted from the track team and ordered to leave the student athlete housing, both were subsequently reassigned to another dormitory and were eligible for continued enrollment in the University. Based on these facts, OCR determined that there is insufficient evidence to support the complainants' allegation that they were terminated from the track team and the University in retaliation for reporting the sexually harassing conduct of the track coach.

Thank you and your staff for your cooperation during our investigation of this matter. If you have any questions please contact Ms. Juliette Stroman, Equal Opportunity Specialist at (404) 562-6385.

Sincerely,



Brenda Niforth
Team Leader