

UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS
Midwestern Division
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JUN 25 1998

Dr. Jerald A. Tunheim
President
Dakota State University
Heston Hall
Madison, South Dakota 57042-1799

Ref: 07982028

Dear Dr. Tunheim:

On January 12, 1998, the Office for Civil Rights (OCR), U.S. Department of Education (Department), received a complaint alleging that Dakota State University (University), Madison, South Dakota, discriminated against female students in the basketball program on the basis of sex. Specifically, the complainant alleged that these students were sexually harassed. Additionally, the complainant alleged that the University retaliated against these female students for opposing activity they believed to be in violation of Title IX.

OCR is responsible for enforcing, among other civil rights statutes, Title IX of the Education Amendments of 1972 (Title IX), 20 United States Code (U.S.C.) § 1681 *et seq.*, and its implementing regulation at 34 Code of Federal Regulations (C.F.R.) Part 106, which prohibit recipients of Federal financial assistance from the Department from discriminating on the basis of sex in education programs or activities. Since the University is a recipient of Federal financial assistance, it has the responsibility for ensuring compliance with the regulation implementing Title IX.

Sexual Harassment

The complainant alleged that the University allowed a sexually hostile environment to exist in the University's women's basketball program. The University investigated the allegations of this complaint. On December 1, 1997, the University's investigative team determined that there was no factual evidence to substantiate the complainant's allegations and no probable cause to bring disciplinary action. On April 5, 1998, through April 10, 1998, OCR conducted an on-site investigation.

During OCR's investigation, OCR interviewed individuals named by the complainant or affiliated with the University's women's basketball program. The interviews included the complainant; a witness named by the complainant; three University faculty and staff members; the three members of the University's Athletic Committee; three members of the women's basketball program staff; fourteen women basketball players; the father of a former player on the University women's basketball team; and, seven former members of the women's basketball team. The complainant's daughter was not interviewed because she did not keep her interview appointment and further attempts to contact her were unsuccessful.

During the investigation, OCR interviewed the complainant's witnesses. They provided no useful information. OCR interviewed nine of the University faculty, staff, Athletic Committee members and the coaching staff of the women's basketball program. None of these individuals substantiated the existence of sexual harassment or a sexually hostile environment. Fourteen players of the University women's basketball team were interviewed. OCR also interviewed former players on the University's women's basketball team. The players made no claim of the existence of sexual harassment or a sexually hostile environment regarding the women's basketball team.

Retaliation

The complainant alleged the University retaliated against members of the University women's basketball program for opposing activity they believed to be in violation of Title IX.

On April 5, 1998, the complainant stated to OCR that the sexual relationship between the head coach and a member of the women's basketball program created a sexually hostile environment which had a negative impact on the team's ability to play to its full potential. The complainant also stated that the University retaliated against three players who complained about the relationship between the head coach and one of his players.

The complainant stated to OCR that the parents of another player reported the alleged sexual relationship and sexual harassment of females who participated on the University women's basketball team to the University President. Subsequently, the University initiated an investigation of the allegations. On December 1, 1997, the University's investigative team issued a report to the University President that there was no factual evidence to substantiate the allegations of the complaint and no probable cause to bring disciplinary action.

During OCR's investigation, OCR asked nine University faculty members, Athletic Committee members, women's basketball program staff; fourteen women basketball players; and, seven former players of the University's women's basketball team whether they were retaliated against for opposing the alleged sexual relationship between the head coach and one of the players. All of those interviewed stated there had not been any instances of retaliation against them by the University. The complainant's daughter, one of the three individuals the complainant named who were retaliated against by the University, was not interviewed by OCR because she did not keep her interview appointment and further attempts to contact her were unsuccessful.

Based upon the information and documentation obtained during this investigation, OCR concludes that there is insufficient evidence to support the complainant's allegations that the players of the University women's basketball team were sexually harassed by the head coach and the University allowed a sexually hostile environment to exist in the women's basketball program. OCR also concludes that there is insufficient evidence to support the complainant's allegation of retaliation against the players of the University women's basketball team for reporting an alleged sexual relationship between the head coach and one of his players. Therefore, these allegations are closed as of the date of this letter.

Procedural Issues

On May 14, 1998, the University's Personnel Manager submitted a copy of the University's Title IX sexual harassment policy and grievance procedures. OCR reviewed the University's sexual harassment policy and procedures. OCR determined that University's sexual harassment policy is located in the **Student Conduct Policies and Procedures** under Discriminatory Conduct, Board Policy 4:6, which includes sexual harassment, racial harassment, and other grounds identified in Board Policy 4:6(2). OCR determined that the University's sexual harassment policy does not define sexual harassment; provide specific types of sexual harassment; provide examples of conduct that may constitute sexual harassment or of a sexual nature; define a sexually hostile environment; and, the identification of sexual harassment offenses and consequences. OCR also reviewed the University's sexual harassment grievance procedures. OCR determined that the University's grievance procedures do not provide for an impartial investigation student and employee complaints alleging discrimination based on sex; that includes confidentiality; prompt and equitable resolution of the complaint; time frames for investigation and resolution; if appropriate, a timely remedy implemented within established time frames; and protection from reprisal and retaliation. OCR also

established that the University does not have a Title IX coordinator, who would handle complaints alleging sexual harassment.

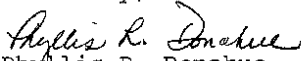
On June 19, 1998, the University voluntarily submitted a Resolution Agreement (Agreement) to resolve the procedural issue of this complaint. This Agreement provides that the University will modify its sexual harassment policy and grievance procedures using the Office for Civil Rights: Sexual Harassment Guidance, dated March 13, 1997. Therefore, OCR considers this complaint resolved effective the date of this letter. Implementation of the Agreement will be monitored by this Office. If the University fails to implement the Agreement, OCR will immediately reopen the case and resume its investigation.

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 the laws OCR enforces, or because one has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under the laws OCR enforces. If any individual is harassed or intimidated because of filing the complaint or participation in the investigation, the individual may file a complaint with OCR alleging such harassment or intimidation.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect, to the extent provided by law, personal information that, if released, could constitute an unwarranted invasion of privacy.

If you have any questions regarding this matter, please contact Ken Kern, Investigator, at (816) 880-4247 (voice) or (816) 891-0582 (telecommunication device for the deaf).

Sincerely,


Phyllis R. Donahue
Acting Associate Director

Enclosure

RESOLUTION AGREEMENT
Dakota State University
Docket No. 07982028

RECEIVED
OFFICE OF THE
REGIONAL DIRECTOR

1998 JUN 19 PM 12:12

U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

The Dakota State University (University) submits the following Resolution Agreement (Agreement) to the U.S. Department of Education, Office for Civil Rights (OCR), to resolve concerns regarding the regulation implementing Title IX of the Education Amendments of 1972 (Title IX), 20 United States Code (U.S.C.) § 1681 *et seq.*, which OCR identified during the course of the investigation of this complaint. The University agrees to implement the following:

1. By September 30, 1998, the University will modify its current sexual harassment policy and grievance procedure in a manner which for students defines sexual harassment and identifies behaviors that constitute sexual harassment; and establish sexual harassment as a specific offense of the **Student Conduct of Policies and Procedures** and identifies disciplinary sanctions which are commensurate with the gravity of the offense. The sexual harassment policy will incorporate the information provided in the Department of Education's "Office of Civil Rights; Sexual Harassment Guidance; Harassment of Students by School Employees, Other Students, or Third Parties; Notice," 61 Fed. Reg. 52172, March 13, 1997.
 - a. By September 30, 1998, the University will publish its revised sexual harassment policy and grievance procedure in all University publications, including faculty/student handbooks and University affiliated newspapers.

By October 15, 1998, the University will provide OCR with copies of the faculty/student handbooks and University affiliated newspapers.
 - b. By September 30, 1998, the University will distribute notification to faculty and students of the revised sexual harassment policy and grievance procedures, as well as the name and title, address and phone number of the Title IX Coordinator.

By October 15, 1998, the University will submit to OCR documentation that illustrates the method in which the notification was distributed.
2. Nancy Grassel, Personnel Manager, has been designated Title IX Coordinator since 1997. She is responsible for investigating complaints of sexual discrimination, including sexual harassment made informally or through the formal grievance procedure.

Dakota State University

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3. The Title IX Coordinator will be responsible for making findings, maintaining all records regarding complaints and investigations of sexual discrimination for at least two years, including sexual harassment. The University will make these records available to OCR upon request.
 - a. The University will submit a report regarding the number of complaints of sexual discrimination, including sexual harassment; any completed investigations, any pending investigations; findings made as a result of the investigations; and resolutions of each investigated complaint for the 1998-99 academic year to OCR at the end of each semester by January 20, 1999, and June 1, 1999.
 - b. By June 30, 1999, the University will provide the Title IX Coordinator specialized training dealing with Title IX sexual discrimination and provide OCR with a copy of the course, the instructor's name and the date of the training.
4. *By May 31, 1999, the University will provide training regarding sexual discrimination, specifically sexual harassment, to the University students. The training for staff and students at a minimum should include a definition of sexual harassment; behaviors that constitute sexual harassment; the causes of sexual harassment; contributing factors to sexual harassment; the University's policy and procedure regarding sexual harassment; how sexual harassment affects the victim; and consequences to the harasser.
5. By September 30, 1998, the University will develop a policy to ensure new permanent University employees receive sexual harassment training.
 - a. In order to remain current, the Title IX officer seeks out journal articles, web pages, concurrent sessions at Human Resources conferences and other means to stay abreast of new laws and regulations. For example, the office received materials from the Stetson University College of Law's 18th Annual National Conference on Law in Higher Education titled "New Office of Civil Rights Guidance on Student-to-Student and Employee-to-Student Harassment" and "How to Investigate a Sexual Harassment Claim" in the fall of 1997. As many opportunities as possible are taken advantage of and all reference materials are compiled in a binder for future use.

*The University will continue to provide training regarding sexual harassment to the University staff. This training has typically taken place during faculty/staff orientation in August, but will take place in other forms as well.

J. Tunheim (eb)
Jerald A. Tunheim, President
Dakota State University

6-19-98
Date