

# **Title IX, Sexual Harassment, and Policies at NCAA Division IA Athletics Departments**

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## INTRODUCTION

The University of Colorado athletics department maintained a high profile in news coverage this past year. The headlines were not to promote the amazing athletic accomplishments of the athletes, but to expose bad behavior off the field. An accusation that sex, drugs, and alcohol were being used by football players and hosts to entice recruits turned out to be a series of incidents spanning six years, from 1997 – 2003. When the investigation was completed, seven women claimed to have been sexually assaulted by football players, including Katie Hnida who was kicker on the football team at the time of the alleged assault. Football coach Gary Barnett further embarrassed the university by responding to the assault allegations by criticizing Hnida's ability as a football player (Pitts, 2004). The investigation cost the university \$813,416.00, not including damage to reputation and embarrassment (Ensslin, 2004).

Studies have indicated that intercollegiate male athletes are more likely to commit crimes of a sexual nature than male non-athlete students. Research conducted by Crosset et al. (1995), using data from campus police departments and judicial affairs offices, reported that although male athletes made up roughly two percent of a campus' student population, they were named in 23% of the sexual assault cases. Melnick (1992) reported that male, varsity athletes on revenue producing teams self-reported higher rates of sexually abusive behavior.

The problem is not limited to male student-athletes—coaches and administrators of both genders have been the recipients of complaints at universities across the country in the past decade (Borg, 2003; Good, 2002; Ove, 2002; Dame, 1993). Other research indicates that coaches or people in

power in a sporting environment are more likely to commit severe forms of harassment, such as unwanted physical intrusion or sexual advances (Kirby, 2002; Kirby, 2000; Brackenridge, 1997). Athletic departments may be faced with six different sexual harassment scenarios: (a) claims against supervisors by their employees; (b) claims against employees by co-employees; (c) claims against non-employees by employees; (d) claims against coaches by their student-athletes; (e) claims against coach-teachers by their students; and (f) claims against student-athletes by their peers. None of these scenarios are restricted by gender (Masteralexis, 1995).

Increasingly, colleges and universities are becoming entangled in sexual harassment lawsuits and settlements, which are costly both monetarily, and in damage to the reputation and integrity of the school and its athletic program. In 1997, the University of Tennessee paid a \$300,000 settlement to a woman who made thirty-three sexual harassment claims against numerous individuals within the athletic department, including Peyton Manning, the star quarterback on the football team (Sports desk, 1997). In 2002, Rhode Island paid a \$45,000 settlement to a former athletic department employee who alleged she was subject to inappropriate touching and abusive language by employees in the athletic department, among them the head men's basketball coach and the athletic director (Borg, 2003). The University of North Carolina was entangled in a twelve million dollar lawsuit involving its women's soccer coach and two former players (*Jennings, et al. v. University of North Carolina at Chapel Hill*, 2002). One plaintiff settled with the University in March 2004 for \$70,000. The case was dismissed in October 2004 as to the remaining complainant. Although the judge indicated that the coach's behavior did not rise to the level of harassment, the lawsuit was a dark cloud hanging over the most successful women's athletic team in the country for six years (Barnett, 2004b).

In order to minimize instances of sexual harassment and to protect themselves from legal liability, it is important for athletic departments to have sound policies and procedures in place, and disseminate this information to its employees and student-athletes (Wolohan, 1995a). Creating an environment of awareness about sexual harassment will not only reduce incidences of harassment, but also provide security for the victims by ensuring they feel comfortable enough to report harassing behavior (Bingham, 2001; Williams, 1992). This would allow a larger number of cases to be resolved earlier in the process; thus, avoiding a more damaging situation for all parties involved (Wolohan).

The purpose of this study is to examine the sexual harassment policies and procedures currently in place at NCAA Division IA institutions. Specifically, the study addresses the following questions:

1. What policies do collegiate athletic departments have in place to address sexual harassment?
2. What procedures are being utilized by athletic departments to deal with sexual harassment claims as they arise?
3. Are athletic departments adhering to these policies and procedures?
4. Are athletic departments educating their employees and student-athletes about the policies and procedures?
5. Are athletic departments employing means of harassment prevention?

## REVIEW OF LITERATURE

### Title VII of the Civil Rights Act of 1964

Since the passage of Title VII of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972, discrimination on the basis of sex is illegal in both the workplace and in educational institutions. Title VII was enacted to prevent employment discrimination on the basis of race, color, religion, sex or national origin. Title VII states:

It shall be an unlawful employment practice for an employer

(1) to fail or refuse to hire or to discharge any individual, or otherwise 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; or

(2) to limit, segregate, or classify his employees or applicants from employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin (42 U.S.C. §2000e-2, 2004).

Sexual harassment is "discrimination because of sex" under Title VII. The Equal Employment Opportunity Commission (EEOC), which enforces Title VII, defines sexual harassment as:

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment 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, 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 (EEOC, 1999).

The first two conditions are typically referred to as quid pro quo sexual harassment, and the third condition is commonly known as hostile environment. Harassment behaviors include, but are not limited to, lewd comments, condescending or patronizing behavior, pinching, touching, caressing, sexual jokes, or intimidating sexual remarks (EEOC, 1990).

*Williams v Saxbe* (1976) was the first case in which sexual harassment was determined to be a form of sex discrimination. The defendant Williams was subjected to quid pro quo sexual harassment by her supervisor. The Supreme Court ruled that sexual harassment is a form of sex discrimination actionable under Title VII, if the harassment places an artificial barrier on employment (*Williams*, 1976, p. 658).

The precedent for hostile environment sexual harassment was set by the cases *Ellison v. Brady* (1991) and *Harris v. Forklift Systems, Inc.* (1993). The courts ruled in both of these cases that hostile environment harassment has occurred if the conduct is "sufficiently severe or pervasive as to alter the conditions of a victim's employment and to create an abusive working environment. . . an environment that a reasonable person would find hostile or abusive" (*Harris*, 1993, p. 21). They further ruled that "discriminatory, abusive work environments can exist, without affecting an employee's psychological well-being, by detracting from an employee's job performance, discouraging remaining on the job, or keeping employees from advancing in their careers" (*Harris*, p. 22).

#### Title IX of the Education Act of 1972

Title IX prohibits discrimination on the basis of sex by any educational institution receiving federal funds. Title IX states that "no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education

program or activity receiving Federal financial assistance" (20 U.S.C. 1681(a), 2003).

The Office of Civil Rights (OCR) in the U.S. Department of Education is responsible for enforcing Title IX. In the 2001 guidance, sexual harassment is defined as it applies to educational institutions as "unwelcome conduct of a sexual nature. . . in each case, the issue is whether the harassment rises to a level that it denies or limits a student's ability to participate in or benefit from the school's programs based on sex" (OCR, 2001). Sexual harassment can consist of, but is not limited to:

- Written or verbal abuse or threats
- Sexually oriented comments or gestures
- Sexual or homophobic graffiti
- Jokes of a sexual nature, lewd comments or sexual innuendo
- Bullying or vandalism on the basis of sex
- Offensive phone calls or photos
- Taunts about body, dress, marital status, or sexuality
- Intimidating sexual remarks, propositions, invitations, or familiarity
- Condescending or patronizing behavior
- Physical contact, fondling, pinching, or kissing (Brackenridge, 1997).

Quid pro quo and hostile environment sexual harassment are also actionable under Title IX (OCR, 2001).

In the landmark case *Franklin v. Gwinnett County Public Schools* (1992), the Supreme Court held that a plaintiff was eligible to receive monetary damages for suffering sex discrimination under Title IX (p. 1035). This ruling raises the stakes for educational institutions and athletic departments that are not proactive about prevention and thorough in their investigation and handling of sexual harassment claims. Institutions could now find themselves facing a hefty Title IX lawsuit if instances of harassment were not properly addressed.

In another Title IX case, *Davis v. Monroe County Board of Education* (1999), the Supreme Court used Title VII as a guide in its ruling. The Court found that schools are responsible for both preventing peer sexual harassment, and handling claims of peer sexual harassment in a prompt and effective manner (*Davis*, p. 1671). This ruling again dramatically increased the scope of legal liability faced by collegiate athletic departments. The precedent was

established, putting athletic departments in a position to be held liable for the actions of their student-athletes.

### Employer Liability

The courts have been relatively consistent in their rulings about employer liability (Siddiqui, 1998; Wolohan, 1995b). Employers must have a sexual harassment protocol in place that is precisely followed when incidents arise. Further, employees must be made aware of and educated about the policy, and resources must be made available to victims who wish to report harassing behavior (EEOC, 1999). Mismanagement of a sexual harassment claim can lead to serious ramifications down the road. Businesses, government agencies, and educational institutions found to be negligent in addressing sexual harassment may find themselves facing civil suits and significant punitive damages. Additionally, the resulting publicity from these incidents can severely damage the reputation of the company or school involved.

The decision in *Williams v. Saxbe* opened the door for sexual harassment as an actionable form of sex discrimination under Title VII. In *Meritor Savings Bank v. Vinson* (1986), the Supreme Court provided some guidance on how to determine if harassing conduct is unwelcome, as well as the level of employer liability. The Court established five elements required to raise an actionable claim: 1) The employee belongs to the protected category; 2) the employee is subject to unwelcome harassment; 3) the harassment was based on sex; 4) the harassment affected the term, condition, or privilege of employment; and 5) the employer knew or should have known of the harassment and failed to take prompt, effective remedial action (pp. 68-73).

In response to the Supreme Court decision in *Meritor Savings Bank v. Vinson*, the EEOC issued additional guidelines in 1990. The guidelines clearly stipulate that employers are responsible for providing a harassment free environment in four ways: 1) having a policy that prohibits sexual harassment and making employees aware of the policy; 2) addressing complaints of sexual harassment in a prompt and effective manner; 3) taking corrective action to end the harassment, and 4) providing remedial compensation to the victim(s) (EEOC, 1990). In cases where employers fail to minimally follow these four requirements, the EEOC Guidelines make it clear that they will be held liable (EEOC).

The EEOC again issued guidelines in 1999 to provide further clarifications on employer liability in light of recent Supreme and Federal Court Decisions. The Guidelines reiterate the EEOC's prior guidance on employer liability for harassment by co-workers by stating that "the employer is liable if it knew or

should have known of the misconduct, unless it can show that it took immediate and appropriate corrective action" (EEOC, 1999). Additionally, the Guidelines outline employer liability for acts of harassment by supervisors. They state that an employer is always liable for actions by a supervisor that result in a tangible effect on the employment status of the victim (EEOC).

In cases of hostile environment harassment, the employer can raise an affirmative defense if it can show: 1) reasonable care was exercised to prevent and promptly correct harassment; and 2) the employee failed to take advantage of the resources provided by the employer (EEOC, 1999). In order to show reasonable care to prevent and correct harassment, the employer must have established, publicized, and enforced anti-harassment policies and grievance procedures prior to the complaint of harassment (EEOC). This includes handing out a copy of the policy and complaint procedure to every employee, posting them in central locations, and including them in employee handbooks. The policy and procedures should include a clear explanation of prohibited conduct, an assurance of protection from retaliation for the complainant, a clearly described complaint process, a promise of confidentiality, and a "prompt, thorough, and impartial investigation, and assurance that immediate and appropriate corrective measures will be taken" (EEOC). The complaint procedure should also provide accessible contact people, not the complainant's supervisors, to receive complaints, and a reasonable time frame for investigation. As soon as an employer learns of a complaint, it should determine whether an investigation is necessary, and launch the investigation as soon as possible. In the meantime, the employer must initiate intermediate protective measures against further harassment. If it is determined that harassment has occurred, the employer must take immediate corrective/disciplinary action to effectively end the harassment (EEOC).

The Guidance also established that the employee must exercise reasonable care by taking advantage of complaint procedures. A failure to complain about persistent harassment would effectively diminish the employer's liability if the employee opted to file a civil suit (EEOC, 1999). The EEOC recommendations for avoiding employer liability require a detailed thorough planning process, a well-written policy and complaint procedure, and a significant effort by the employer to publish and advertise the policy.

Since its inception, Title IX has been interpreted similarly to Title VII in terms of what constitutes sexual harassment and employer responsibility. The first case to address student protections from sexual harassment under Title IX was *Alexander v. Yale University* (1980). The five plaintiffs, both current and former students, alleged that they were sexually harassed by Yale administrators and faculty and that Yale was in violation of Title IX for

refusing to take their complaints seriously. The District Court rationalized that it was "reasonable to maintain that academic advancement conditioned upon submission to sexual demands constitutes sex discrimination in education. . .when a student files a sexual discrimination complaint with a university and the university fails to act. . .the university may be held responsible for condoning or ratifying such discriminatory action" (*Alexander*, 1980, p. 182). The case was dismissed due to lack of standing and means for sufficient redress. The Appeals court upheld the dismissal, but reiterated the rationale used by the District Court that sexual harassment of students was a type of discrimination prohibited by Title IX (p. 183).

In *Giordano v. William Paterson College* (1992), the United States District Court of New Jersey outlined procedural measures required by employers to avoid liability. The five elements established were: 1) whether the employer investigated alleged acts of harassment; 2) the type of investigation conducted; 3) the post-investigation remedial steps taken; 4) the grievance procedures and policies against discrimination in place at the place of employment; and 5) whether or not the harassment ended after remedial steps were taken (*Giordano*, 1992, p. 643). This provided considerable clarification of the extent to which employers are responsible for preventing a hostile environment in the workplace, and was eventually used as a guide for determining responsibility incurred by educational institutions under Title IX (*Giordano*).

Because schools may be liable for the acts of employees, a thorough background check of the candidate's references, education, and employment history should be conducted to unearth a history of harassing behavior before hiring (Masteralexis, 1995). Schools may even want to consider hiring an outside firm to conduct the check. An independent firm has the skills and resources necessary for a thorough examination, a working knowledge of the laws governing the screening process, and oftentimes carries indemnity insurance to assume liability for the report if problems arise later (Rosen, 2003). The University of Florida found itself in the midst of a legal nightmare when a popular sports television show unearthed a history of sexual indiscretions and harassing behaviors by their recently hired swim coach. The show reported that the coach had been involved in several relationships with swimmers he had been coaching, some of whom were under the age of consent. Additionally, a former Florida swimmer went on the record saying the coach verbally abused her on numerous occasions, often resorting to explicit language and sexual slurs. Her complaint to administrators was dismissed as an isolated incident.



After the show's release, Florida conducted a thorough investigation of the coach, and decided to terminate his contract. The athletic director in charge of the hire went on the record as saying, "In light of everything that's happened, I may have made a different choice, if we had known everything that we know now" (Dame, 1993). If an institution employs an individual, even unknowingly, with a history of harassing or criminal behavior and minimal protective measures are not employed, they open the door for two potential areas for liability: negligent retention of an unfit employee or violation of the student's liberty interest awarded under the substantive due process component of the 14<sup>th</sup> amendment (Wolohan, 1995b).

The OCR Revised Sexual Harassment Guidance explains the liability of the educational institution under Title IX. If the employee engages in sexual harassment while carrying out responsibilities to provide benefits and services to students, the institution is responsible for the discriminatory conduct, remedying its effects, and preventing future occurrences whether or not it has notice of the harassment. If the employee is acting outside the scope of his or her assigned duties, the institution must take prompt and effective action to stop the harassment and prevent its recurrence upon notice of the harassment. The institution is considered to have engaged in its own discrimination if it fails to act and allows the student to be subjected to a hostile environment that denies or limits the student's ability to participate in or benefit from the school's program. The institution is responsible for peer or third party harassment if the institution knew or reasonably should have known of the harassment and failed to take prompt and effective action (OCR, 2001).

Title IX requires that schools adopt and publish grievance procedures to address sexual discrimination. The procedures do not have to be specific to harassment, but should provide an effective manner for preventing and addressing sexual harassment. The OCR recently reissued the following criteria for evaluating a school's grievance procedure:

1. Notice of policies and procedures must be sent to students, parents (elementary and secondary), and employees, including where complaints may be filed.
2. The procedure must actually be applied to complaints alleging harassment.
3. An adequate, reliable, and impartial investigation of the complaints must be conducted, including the opportunities to present witnesses and other evidence.

4. A designated, prompt time frame should be established for the complaint and investigative process.
5. Notice of the outcome of the complaint must be given to the parties involved.
6. An assurance must be made that the school will take corrective measures to eliminate current harassment and similar instances of harassment in the future (OCR, 2001).

If an educational institution implements these guidelines when developing its sexual harassment policies and procedures, it should function to reduce instances of harassment and provide protection for its students. It will also mitigate liability if a complaint is made to the OCR or a civil suit is filed (OCR, 2001).

#### Coach/Athlete Sexual Harassment

Research indicates that sexual harassment is prevalent in college athletics. A study conducted by Volkwein et al. (2002) compared the frequency of various types of harassing behavior experienced by female athletes to harassing behavior experiences by female students in academia. The study revealed that female athletes experience forms of mild harassment, such as touching, questioning by a coach about their personal affairs, invitations to lunch/dinner, or being called by pet names, at a significantly higher rate than non-athlete female students in academia (Volkwein-Kaplan, 2002). However, athletes experienced more severe forms of harassment at a slightly lower rate. About 18% of female athletes experienced sexist comments by their coaches, compared to the 19.5% of non-athlete female students who reported experiencing sexist comments by an instructor/professor. Almost two percent of athletes indicated experiencing verbal or physical advances by their coaches, compared to 2.7% of students reporting similar behavior by an instructor/professor (Volkwein-Kaplan).

In an earlier study of female athletes at NCAA institutions conducted by Volkwein et al (1997), it was found that 20.2% of the women surveyed experienced potentially threatening forms of harassment, such as a coach inviting them out to dinner or calling them by a pet name such as "honey" or "dear." Forty-five percent of the women perceived this behavior to constitute a form of sexual harassment and believed that the behavior had the potential to hurt their individual or the team's success. A majority of the women indicated a positive response about receiving this attention from their coach. Almost 19% of the women reported that their coach made sexist comments or jokes

about women. Seventy-two percent of these women indicated that this behavior made them uneasy or nervous, while 27.3% stated they were "OK" with the behavior. Finally, two percent of the women reported experiencing verbal or physical advances on the part of their coach, and all the women surveyed agreed that this behavior was not acceptable (Volkwein et al, 1997).

These studies indicate a desensitization of female athletes to the "hostile environment" that is sometimes present in their athletic experience. Discrepancies between the women's knowledge of what constitutes harassment and its potential deleterious affects, and their willingness to tolerate or even welcome the behavior is cause for concern (Tomlinson & Yorganci, 1997).

#### PEER SEXUAL HARASSMENT IN ATHLETICS

Complaints of peer harassment have been levied across the nation against universities and their athletic departments (Moore, 2003; Ove, 2002). A female swimmer from the University of Pittsburgh filed a civil suit seeking reinstatement to the university swim team claiming she was released as a result of her complaints of harassment against a swimmer on the men's team (Ove). A former place kicker on the University of Colorado football team publicly alleged that she was sexually harassed by her teammates, which led to her transfer to the University of New Mexico. She stated that she was "treated like a piece of meat" during her season with the team in 1999, and repeatedly called "names that are unrepeatabe" (Moore, p.B1). The student-athlete indicated she approached the coach several times during the season, but the harassment persisted (Moore).

A number of studies completed in the United States have examined whether or not male athletes are more prone to sexually aggressive and/or violent behavior, and a positive correlation has been demonstrated. Male student-athletes are responsible for a significantly higher percentage of sexual assaults on college campuses than male non-athletes (Crosset et al., 1995). A 1990 survey conducted by the National Institute of Mental Health indicated that athletes participated in approximately one-third of the sexual attacks that occurred on college campuses (Melnick, 1992). A survey conducted in 1991 by Towson State University's Center for the Study and Prevention of Campus Violence found that athletes were 5.5 times more likely to admit committing date rape (Melnick). Even if athletes are not committing date rapes more frequently, the study indicated they are more comfortable admitting it, possibly implying desensitization to the issue.

Athletic departments, coaches, and admissions offices should also think long and hard before recruiting or accepting students with histories of sexual

misconduct or assault. Repeated sex offenders generally do not rehabilitate themselves without significant commitment and counseling (Greenfield, 1997). Bringing a student-athlete with this type of history onto campus could endanger the well-being of students at the university, and also put the university at risk for a lawsuit. In August 2003, a former student at the University of Georgia filed a 25 million dollar lawsuit against the university, naming the president, the athletic director, and the former basketball coach as defendants. The suit claimed that these individuals were aware that the student-athlete who alleged raped the plaintiff had a history of sexual assaults before he was recruited and admitted to the university (Schlabach, 2003). The student-athlete had been accused of sexual harassment and assault at the community college he was recruited from, and was facing a federal lawsuit stemming from the accusations (Schlabach).

#### LIMITATIONS OF RESEARCH CONCERNING SEXUAL HARASSMENT

Sex issues are sensitive, and there are a number of limitations that have been encountered in conducting this type of research. Subjects may not respond due to feeling intimidated by the subject matter or the survey itself (Toftegaard, 2001). Subjects who have experienced sexual harassment at some point in their career might have quit athletics altogether. Studies have indicated that individuals are not always clear on what kind of behavior constitutes sexual harassment, and often do not recognize it when it occurs. Even if individuals do recognize sexual harassment, they are often quick to blame themselves or experience feelings of shame, which may result in them not filling out surveys openly and honestly. It is also possible that universities or athletic departments that have had a history of sexual harassment incidents would not be amenable to participating in this type of research (Volkwein, et al, 1997). Finally, it is likely that the harassers would be unwilling to be honest and straightforward about their behaviors, due to denial about the behavior or fearing the potential repercussions of their actions (Toftegaard).

#### METHODOLOGY

The population for this study was limited to the 117 athletic departments of NCAA Division IA member institutions. A survey was devised to determine the sexual harassment policies, procedures, and educational programs and preventative measures utilized by the athletic department. The majority of the survey consisted of Yes/No questions and multiple choice questions. The participants were also asked to express their opinions on their

department's effectiveness in addressing sexual harassment issues, as well as the overall attitude of their department.

The survey was disseminated to the Senior Woman Administrator at all 117 NCAA Division IA member institutions. In the event that the Senior Woman Administrator was not responsible for handling sexual harassment complaints, the SWA was asked to forward the survey to the individual in the athletic department who is responsible for handling these matters. A low response rate was expected due to the sensitive subject matter of the questionnaire. Complete confidentiality was promised, and the names of the participating administrators did not appear on the surveys.

The survey was administered using the online survey provider called Survey Monkey (<http://www.surveymonkey.com>). The service provides a web template that allows the user to construct an on-line survey questionnaire. The service options offer a number of formats for survey questions, customized layouts and color schemes, and randomized answer choices to eliminate bias. Survey Monkey allows users to analyze results as they are collected, view graphs and charts, and access particular individual responses. The benefits of using this service were the ease of the response for the participant, efficient organization of the results, and the numerous methods of data analysis available through the service.

Completed surveys were analyzed to determine what policies schools currently have in place to combat incidences of sexual harassment, and the procedures utilized to handle these incidents. In addition, the study compared the sexual harassment complaint history of a department to their current policies and procedures. Therefore, inferential and descriptive statistics were used to analyze the data on the returned surveys. Mean responses were calculated and examined to identify any trends in survey responses. Independent sample t-tests were conducted to determine statistical significance.

## RESULTS

Forty-three individuals responded to the survey for a response rate of 37%. Forty-one identified themselves as the SWA in their department, and two were the department Human Resources Managers. All of the survey respondents were women. In order to determine whether the survey results could be extrapolated to characterize the entire population of Division IA athletic departments, confidence intervals were calculated for the responses where applicable.

## ATHLETICS DEPARTMENT POLICIES

As illustrated in Table 1, 77% of the Senior Woman Administrators (SWA) participating in the survey indicated that their athletic departments had a written sexual harassment policy. Twelve percent of these departmental policies were distinct from the policy set forth by the university, and 5% included an addendum to the university policy that was specific to their athletic department. Regarding the specifics of the adopted sexual harassment policies, 79% indicated that their policies included a specific definition of what constitutes sexual harassment. Seventy-seven percent of the policies outlined what conduct was considered impermissible by the department. Eighty-three percent contained a promise of non-retaliation against complainants. Fifty-two percent of the respondents indicated that their policies contained a promise of non-confidentiality, while 21.4% were unsure if this statement was included. Thirty-three percent of the policies included an explicit statement prohibiting coaches from having intimate relationships with their athletes, while 24% indicated that this was either communicated orally or could be inferred from the University Policy prohibiting professor/student relationships.

TABLE 1: SEXUAL HARASSMENT POLICY

*Parentheticals denote the actual number of respondents*

	YES	NO	DON'T KNOW	OTHER	N
WRITTEN SEXUAL HARASSMENT POLICY?	76.7% (33)	23.3% (10)	0	0	43
SEPARATE FROM UNIVERSITY POLICY?	11.6% (5)	88.4% (37)	0	2.3% (1)	43
DEFINES SEXUAL HARASSMENT?	79.1% (34)	14% (6)	4.7% (2)	2.3% (1)	43
DEFINES IMPERMISSIBLE CONDUCT?	76.7% (33)	16.3% (7)	4.7% (2)	2.3% (1)	43
INCLUDES NON-RETALIATION STATEMENT?	83.3% (35)	9.5% (4)	4.8% (2)	2.4% (1)	42
INCLUDES STATEMENT OF CONFIDENTIALITY?	52.4% (21)	23.8% (10)	21.4% (9)	2.4% (2)	42
PROHIBITS COACH/PLAYER RELATIONSHIPS?	35.7% (15)	33.3% (14)	7.1% (3)	23.8% (10)	42

For the most part, athletic departments adopt the sexual harassment policy of their respective universities, in a few cases adding a department-specific addendum. Customizing the university policy to cater to the athletic program is probably the most efficient and legally sound approach (Bingham, 2001). Colleges and universities, particularly large four-year institutions, employ human resource managers and legal counsel who are well-versed in the art of policy-making. There is no need for athletic departments to reinvent the wheel. Using the university policy and adding an athletic department supplement would keep the original craft of the policy intact, while providing departmental-specific information to employees and student-athletes. The fact that the department took time to supplement the University policy with a statement of its own, would demonstrate to potential perpetrators and

complainants that the department takes a serious and premeditated stance against sexual harassment.

Alarming, almost a quarter of the respondents indicated that their athletic departments had not adopted a written sexual harassment policy of any sort. Although the athletic department is likely covered under the umbrella of its university policy, this is an ill-conceived lack of planning on many levels. The sexual harassment guidelines published by both the EEOC and the OCR clearly state that the sexual harassment policy should be written and advertised to employees and students. In addition, the guidelines indicate that an institution will be held liable if they knew or should have known about the harassment and did nothing to correct the problem. If the department has not adopted a written policy that it advertises to its employees and student-athletes, it indicates an indifference to the issue. In a legal setting, this passive indifference would effectively indicate that the department did not take a serious approach to providing a harassment-free environment to their employees and student-athletes. This could make it more likely the courts would conclude that the department was a hostile working and learning environment.

Further, the lack of a written policy sets a bad example for the entire athletic department. If it is not made clear to potential perpetrators what is and is not considered permissible behavior, then the department is at fault. If it is not made clear to a potential victim what the department views as sexually harassing behavior, then victims will be much less likely to report smaller incidences, which could result in a simple misunderstanding snowballing into a much more serious situation with potential legal ramifications. When a department is not quickly able to address less serious issues of harassment, it can quickly escalate to a serious situation with potential legal ramifications. All individuals should be made aware the department will not tolerate sexual harassment in any form. If they are not, it is more likely to occur, and victims may be forced to endure behavior that could have been prevented in the presence of a well-emphasized written policy.

In regards to the specific content of the departmental policy, the majority of schools have all the requisite components. Most indicated that their policy defines sexual harassment and outlines impermissible conduct, as well as includes non-retaliation and confidentiality statements. However, around one-fifth of the respondents indicated that, either their departmental policy did not include these basic elements, or they were unsure if they were included. In the case of the confidentiality statement, the fraction responding in this fashion rose to almost half. The EEOC and OCR guidelines are clear that a sexual harassment policy should, without exception, include these critical elements.



Just over one half of the departments include a statement prohibiting coach/player relationships in their policy, refer to the University policy prohibiting professor/student relationships, or verbally discourage these relationships to their staff. One third of the respondents indicated that their department makes no official statement prohibiting coach/player relationships, which could prove to be problematic. The coach/player relationship is similar to a teacher/student relationship in that there is an inherent power imbalance between the individuals. In collegiate athletics, the power differential is even more pronounced (Brackenridge, 1997). Coaches have a significant amount of control over a student-athlete's life. Their schedules, participatory experience, amount of playing time, and whether or not they will receive or retain a scholarship is largely up to the discretion of a coach. This does not obligatorily signify that a coach will abuse this power dynamic, but it certainly gives the coach a lot of room to do so should he/she be so inclined. Due to the power imbalance, a relationship between a player and a coach, whether coerced or consensual, is often interpreted as sexually harassing behavior, or sometimes rape, by the legal system (Brackenridge, 1997; *See generally Doe V. Taylor Independent School District*, 1994, pp. 443-449). This does not even speak to the effect that a relationship would have on the general team dynamics and the ability of the coach to do his/her job (Brackenridge, 1997). Athletic departments should make it clear to their coaches and student-athletes that this behavior is not acceptable, and is considered a form of sexual harassment, for which there will be serious consequences. This would help to lower the frequency of these events and mitigate departmental liability should a serious situation arise.

#### Athletics Department Sexual Harassment Procedures

Forty-four percent of the responding athletic departments have developed sexual harassment complaint procedures specific to their student-athletes, while 37% indicated that their department did not have such a policy. Seventeen percent responded that their complaint resolution procedures were the same as the University's policy for students. Eighty-five percent responded that the procedure clearly stated to whom a sexual harassment complaint should be submitted (Table 2). Seventy percent of the procedures outlined the steps for complaint submission, 54% explained the investigation process, and 33% provided a timeline for the completion of the investigation.

TABLE 2: STUDENT-ATHLETE COMPLAINT PROCEDURE

	YES	NO	DON'T KNOW	OTHER	N
DEVELOPED A SEXUAL HARASSMENT PROCEDURE?	43.9% (18)	36.6% (15)	0	19.5% (8)	41
INDICATES WHO TO SUBMIT COMPLAINT TO?	85.2% (23)	3.7% (1)	3.7% (1)	7.4% (2)	27
DEFINES STEPS FOR SUBMITTING A COMPLAINT?	70.4% (19)	14.8% (4)	7.4% (2)	7.4% (2)	27
EXPLAINS THE INVESTIGATIVE PROCESS?	67.9% (14)	30.8% (8)	7.7% (2)	7.7% (2)	26
PROVIDES TIMELINE FOR THE INVESTIGATION?	33.3% (9)	67.9% (14)	7.4% (2)	7.4% (2)	27

Student-athletes are directed to a number of individuals to file sexual harassment complaints. Respondents were asked to check all the answer choices that applied to their procedure. In the majority of departments, student-athletes are instructed to direct complaints to an assistant or associate athletic director. Fifty-eight percent added in the "other" category that their procedure directed student-athletes to file sexual harassment complaints at university offices outside of the athletic department. Some of these additional complaint options offered to student-athletes include the Office of Legal Affairs, Victim Advocacy, the Equal Opportunity Affirmative Action Office, Office of Equity and Diversity, university faculty, or the university ombudsperson. Thirty-five percent of the departments direct their student-athletes to file their complaints exclusively through university channels, completely circumventing the athletic department. Two others indicated that the complaint procedure varied based on the situation, and that the student-athletes are generally advised to follow the department chain-of-command.

Athletics departments utilize various methods to disseminate their complaint procedure to student-athletes. Thirty-seven percent of the departments made their procedures available on the internet, 70% included the procedure in their student-athlete handbook, and 19% made use of a pamphlet.

Sixty-three percent indicated that the procedure was orally communicated to the student-athletes, but only 2 (7.4%) of the respondents specified that oral communication was the only method by which the procedure was advertised. Only one respondent (3.7%) indicated that the procedure wasn't officially advertised to the student-athletes in any fashion. In addition, one department orally communicated the procedure to their coaches to pass on to their athletes, and two others published the procedure in another document that is disseminated yearly to their student-athletes. Most of the departments with a procedure in place utilized more than one method to advertise it their employees and student-athletes.

Over one-third of the participating athletic departments do not have sexual harassment complaint procedures designed to address the specific needs of their student-athletes. The OCR guidelines state very clearly that complaint procedures should be clearly outlined, and disseminated to teachers/professors and students. Since the athletic department is often considered to some degree a distinct entity from the university due to its relative financial and administrative self-sufficiency, it would be wise for the department to draft its own student-athlete complaint procedure with the help of the university Human Resources department (Bingham, 2001; Williams, 1992). The sporting experience is distinct from the academic one. The physical nature of most sports, combined with the emotional connection that often develops between a player and coach, make the athletic experience unique. Peer sexual harassment is also an issue. This is particularly true in co-ed sports, or amongst sports that have individuals of both genders practicing with one another (Toftegaard, 2001; Volkwein, 1997). The uniqueness of the athletic environment almost necessitates that a procedure is developed to specifically cater to the needs of the student-athlete.

As shown in Table 3, 73% of athletic departments have an employee sexual harassment complaint procedure in place, with just over a third (36.6%) indicating that the procedure was the same as that of the University. The participants who responded that their department had developed a complaint procedure were asked a series of specific questions about their procedures. Ninety-six percent responded that the procedure clearly stated to whom a sexual harassment complaint should be submitted. Eighty-three percent of the procedures outlined the steps for complaint submission, 68% explained the investigation process, and 32% provided a timeline for the completion of the investigation. It should be noted that 18% of the participants did not know if the procedure described the complaint investigation process, and 25% were unsure if the procedure contained a timeline for the investigation.

TABLE 3: EMPLOYEE COMPLAINT PROCEDURES

	YES	NO	DON'T KNOW	OTHER	N
DEVELOPED A SEXUAL HARASSMENT PROCEDURE?	73.2% (30)	26.8% (11)	0	0	41
INDICATES WHO TO SUBMIT COMPLAINT TO?	96.4% (27)	3.6% (1)	0	0	28
DEFINES STEPS FOR SUBMITTING A COMPLAINT?	82.8% (24)	10.3% (3)	6.9% (2)	0	29
EXPLAINS THE INVESTIGATIVE PROCESS?	67.9% (19)	14.3% (4)	17.9% (5)	0	28
PROVIDES TIMELINE FOR THE INVESTIGATION?	32.1% (9)	42.9% (12)	25% (7)	0	28

Employees are directed to a number of sources to file sexual harassment complaints. In the majority of departments, they are directed to a supervisor (98%), the departmental human resources agent (1%), or a university agency outside the jurisdiction of the department (1%).

In all, 45% of the athletic departments provided the appropriate university office as a means for employees to report a sexual harassment complaint. Sixty-two percent of these (29% of the total respondents) directed their employees to report complaints directly to the university authorities. The specific university office was explicitly stated in the departmental complaint procedure. Fourteen percent of departments only gave one option for issuing a complaint, and in each case, the individual specified was the employee's direct supervisor.

Efforts to create an employee complaint procedure distinct to the department are not necessary. The University has an established procedure for employees to follow if they wish to file a complaint of sexual harassment. Allowing employees to pursue their complaint directly through the proper channels would remove the athletic department as the middleman, and insure

that no speculation about interference or impropriety on the part of the department occurs.

Athletics departments utilized various methods to disseminate their complaint procedure to their employees. Fifty-two percent of the departments made their procedures available on the internet, 66% included the procedure in the employee manual, and 24% utilize a pamphlet to advertise the policy. Fifty-five percent indicated that the procedure was orally communicated to employees, but only one (3.4%) of the respondents indicated that oral communication was the only method of advertisement. The majority of the departments utilized more than one method to advertise their complaint procedure, with 48% of athletic departments using at least two separate methods. Some respondents indicated that their departments also utilized memos, university-provided literature or a university website to advertise the complaint procedure.

In general, departments utilize more than one method to advertise the complaint procedure to their employees and student-athletes. This is a good strategy because it helps to ensure that everyone has access to the procedure, as required by the EEOC and the OCR. Orally communicating the procedure is a fine practice, but should never be the only method utilized. It is impossible to prove that an individual was made aware of the procedure, if it is not in writing. Including the procedure in the employee manual and the student-athlete handbook is a must. These are documents that every individual receives and would be likely to refer to for future reference. Sending out a biyearly departmental memo, pamphlet, or email would also be a sound strategy to ensure that everyone, especially newcomers, are well informed. Posting the policy and procedure on the departmental website, or linking a university website, would also be effective. This would guarantee that potential victims have a constant and easily accessible resource to use for guidance should they need to register a complaint (Southall, 2001; Wolohan, 1995a).

The procedures of the responding athletic departments generally contained all of the requisite elements. The employee procedures were more likely to identify an individual to whom a complaint should be filed and outline the steps for filing a complaint than the procedures for student-athletes. This could be because the university's complaint procedure can be used directly to meet the needs of the athletic department employees. The student-athlete procedures are more likely to be designed by the department itself, which could result in a lack of the required information. It is recommended that the athletics department consult the university's human resources department or

legal counsel after the procedure has been drafted to insure that it is legally sound (Bingham, 2001; Southall, 2001; Williams, 1992).

The procedures were less likely to explain the steps of the investigative process or provide a timeline for the investigation. These two elements are more subjective, as they will vary from case to case, depending on the seriousness and complexity. A general explanation of the overall process, and a statement that the investigation will be conducted in a prompt and efficient manner, are generally sufficient to fulfill the requirements of the EEOC and the OCR.

Student-athletes and departmental employees are given options about how to report sexual harassment. Many of them are directed to report harassment through university channels completely bypassing the athletic department. Almost two-thirds of the departments provide their employees and student-athletes with the name of the appropriate university office, along with reporting options within the department. If a sexual harassment investigation is handled completely by authorities outside of the athletic department, then this will increase the likelihood that the investigation will be conducted in a professional manner, and reduce any speculation that the athletic department tried to suppress complaints or handle them inside the department. Whatever the case, individuals within the department should always be given more than one option about how to file a complaint, and one of those options should be a university office outside the authority of the athletic department.

#### Adherence to Policies and Procedures

As illustrated in Table 4, 62.5% of the respondents stated that there had been at least one complaint of sexual harassment within the department. Only 8% indicated that, to their knowledge, the department had never faced a sexual harassment complaint, and 28.5% of the respondents did not know if their departments had ever been the recipient of a complaint. None of the athletic departments participating in this survey were currently involved in a sexual harassment investigation, a civil suit or a federal investigation.

TABLE 4: ATHLETIC DEPARTMENT COMPLAINT HISTORY

	YES	NO	DON'T KNOW	OTHER	N
COMPLAINT OF HARASSMENT?	62.5% (25)	7.5% (3)	27.5% (11)	2.5% (1)	40
CURRENTLY INVESTIGATING A COMPLAINT?	0	96% (24)	4% (1)	0	25
FACING A CIVIL SUIT OR FEDERAL INVESTIGATION?	0	92% (23)	8% (2)	0	25

In response to specific questions regarding their investigative processes, 92% of respondents indicated that their departments immediately report all complaints of sexual harassment to the appropriate university authorities. Sixty-eight percent responded that the steps of the investigation, and the action taken by the department, were fully documented. It is written in 52% of the policies that the complainant will be regularly informed about the status of the investigation, and the final decision regarding their complaint. Fifty-two percent stated that their department actually takes steps to keep the complainant informed, while 28% were unsure. Eight percent stated that the investigation part of the process is handled by the university, and 8% stated that the degree of contact with the complainant depended on the situation (Table 5).

TABLE 5: DETAILS OF COMPLAINT INVESTIGATION PROCESS

	YES	NO	DON'T KNOW	OTHER	N
REPORTS COMPLAINTS TO APPROPRIATE AUTHORITIES?	92% (23)	8% (2)	0	0	25
DOCUMENTS THE STEPS OF THE INVESTIGATION?	68% (17)	8% (2)	16% (4)	8% (2)	25
CONSISTENTLY ENFORCES DISCIPLINARY ACTIONS?	72% (18)	0	24% (6)	4% (1)	25
STATES THE COMPLAINANT WILL BE KEPT INFORMED?	52% (13)	16% (4)	28% (7)	4% (1)	25
KEEPS THE COMPLAINANT INFORMED ABOUT INVESTIGATION?	52% (13)	4% (1)	28% (7)	16% (4)	25

Fifty-four percent of the administrators stated that their department investigates sexual harassment complaints within 24 hours, and 16.7% begin the investigation within one week. The remaining 29% begin the investigation immediately upon receiving the complaint or as soon as possible within scheduling constraints.

The disciplinary actions cited in departmental sexual harassment policies include verbal or written reprimands, suspension, dismissal, expulsion, or reassignment. Eighty-three percent of the departments encompass their disciplinary measures under the catchall phrase "appropriate corrective measures," which means that each incident is evaluated separately and the discipline is decided upon accordingly. Regardless of the measure, 76% of the respondents stated that the disciplinary actions are enforced in a consistent manner. The remaining 24% of respondents were uncertain about how consistently the measures had been enforced in the past.



An overwhelming majority of respondents indicated that their athletic departments immediately report all complaints of sexual harassment to the appropriate university authorities. This indicates that these departments make it a point to treat every complaint in a serious and business-like fashion. By utilizing proper university channels, the departments take some of the onus off of themselves to solely handle the burden of the investigation. University personnel are better equipped, and educated about how to handle an investigation of this type, and are more likely to conduct the investigation in a professional manner that satisfies both the legal criteria and the parties involved.

In terms of the role the athletic department plays in the investigation of sexual harassment claims, some recommendations may be made. Only about two-thirds of respondents stated affirmatively that their athletic departments keep a written record of the steps of the investigation. It is imperative that the department document all the steps and outcomes of each phase of the investigation, even if the university has taken over the probe. If the matter were to escalate to a legal situation or a federal investigation, the department should be able to outline the steps it took to investigate and correct the harassment. The availability of a written document is the only way to corroborate the actions of the department and to ensure that the facts are recalled correctly. This is especially critical in cases where the process encompasses a long period of time.

Around half of the departmental policies contain a statement that the complainant will be kept informed about the progress of the investigation. Also, half of the respondents indicated that they follow through with this statement by taking the measures necessary to keep the complainant during the process. The EEOC and OCR guidelines are clear on this subject. They suggest that a sexual harassment procedure contain a specific statement to the complainant that they will be kept informed about the stages of the investigation of their complaint, and that the employer/educational institution should take measures to follow through with this promise. Research has indicated that victims of sexual harassment are often shut out of the investigative process and are left disillusioned and unsatisfied. This feeling of dissatisfaction with the process can lead to the victim seeking retribution against the department using legal channels. If the complainants are kept within the loop of the investigation, it is more likely that they will be satisfied with the outcome (Masteralexis, 1995).

All of the respondents answered that their department investigated all sexual harassment claims within one week of the initial complaint, with the majority taking action immediately or as soon as possible after hearing of the

issue. When dealing with sexual harassment complaints, a department can never act too quickly to begin to remedy the situation. The sooner the investigation begins, the sooner appropriate corrective action can be taken, and the sooner the matter is resolved. A quick and effective response and resolution is more likely to result in an outcome that is satisfactory to the complainant. It will ensure that the victim is no longer subjected to the behavior, and that the harasser is appropriately disciplined if the investigation reveals it is necessary.

Athletic departments indicated the use of a variety of disciplinary measures in their sexual harassment complaint procedures, but "appropriate corrective action" was the most common response. "Appropriate corrective action" is a good catch-all phrase that indicates that the disciplinary measures taken will be commensurate with the offense. It allows for flexibility to appropriately remedy a situation on a case by case basis. Examples of other disciplinary actions can be given in the sexual harassment policy, but the phrase "appropriate corrective action" is generally sufficient (EEOC). However, it is critical that the discipline is consistently meted out, and matches the severity of the offense. Letting an employee or student-athlete off with a wrist slap sets a bad example for their peers, and is likely to anger the complainant, leading them to seek other means of retribution. Further, the department should be sure to document for the record the disciplinary action taken (Masteralexis, 1995).

### Education

The participants were asked a series of questions to ascertain how their respective departments educate their student-athletes and employees about sexual harassment and the departmental policies and procedures. Only 32% employed posters and/or pamphlets to advertise the sexual harassment policies, and 19% of the participating departments employed posters and/or pamphlets to discourage sexual harassment. Sixty-eight percent of the departments offered sexual harassment educational programs for their employees, while 50% offered educational programs for their student-athletes (Table 6).

TABLE 6: SEXUAL HARASSMENT POLICY AND PROCEDURE EDUCATION

	YES	NO	DON'T KNOW	OTHER	N
PAMPHLETS/POSTERS TO ADVERTISE POLICY?	31.6% (12)	63.2% (24)	5.3% (2)	0	38
PAMPHLETS/POSTERS TO DISCOURAGE HARASSMENT?	18.9% (7)	78.4% (29)	2.7% (1)	0	37
EMPLOYEE TRAINING PROGRAMS?	68.4% (26)	21.1% (8)	5.3% (2)	5.3% (2)	38
STUDENT-ATHLETE TRAINING PROGRAMS	50% (19)	47.4% (18)	0	2.6% (1)	38
COACHES DIRECTED TO ADDRESS HARASSMENT?	15.8% (6)	76.3% (29)	7.9% (3)	0	38

The specific methods utilized by the responding departments to educate their employees and student-athletes about their sexual harassment policies and procedures included university-wide and department specific programming, literature, employee manual or student-athlete handbook, departmental website and oral communication. The majority of departments surveyed (72%) utilized university programs and the employee manual (68%) to educate their employees. Fifty-seven percent of the departments advertised the policy in the student-athlete handbook, and 51% relied on oral communication to educate student-athletes about the policy. Only 16% of the departments direct their coaches to address sexual harassment with their teams. Forty-three percent of the participants indicated that the department did not provide any additional resource materials addressing sexual harassment. Other departments provided additional resources via the internet, using pamphlets, or resource packets to educate their employees and student athletes on the subject.

Educating employees and student-athletes is an important component of sexual harassment prevention. If the individuals within the department are not aware of the sexual harassment policies and procedures, then there is no way

for them to avail themselves of the process should the need arise. Also, research has indicated that heightening the awareness of sexual harassment has helped reduce incidents of harassment and has increased sensitivity towards the issue. The legal precedent is very clear. It is not sufficient to simply have a written policy and procedure in place; they must be advertised to all. Educational programs about sexual harassment are an effective way to make sure that not only is everyone well-informed, but also demonstrate that the department is sensitive to the issue (Bingham, 2001). In a recent settlement between a coach and a former player, UNC-Chapel Hill agreed to implement sexual harassment programs for all their student-athletes, so that they may be better informed of the policies and procedures. The plaintiff in the case felt strongly that if she had been aware of the sexual harassment policies and procedures, then she would have handled her situation differently, and perhaps, been granted relief from her situation (Barnett, 2004a).

Most major universities offer sexual harassment training programs through the human resource department, or are available for consultation on developing a training program for employees and student-athletes. While research has indicated that educational programs are an effective means to combat harassment, they also emphasize that the program should be developed by individuals knowledgeable in sexual harassment training to make sure that all the requisite elements are comprehensively and effectively covered (Bingham, 2001). Including information on sexual harassment and the departmental policy and procedures in the student-athlete handbook and employee manual is a good way to ensure that everyone will have access to the information. Pamphlets, flyers, and memos are also relatively inexpensive ways to educate employees and student athletes. These items can be kept if the individual desires, and can be easily posted around the department. Providing sexual harassment resources on the internet is another cheap and effective way to disseminate the information.

Many departments opt not to provide general resources about sexual harassment. This, in of itself, is not a critical measure. It is legally sufficient for the department to only advertise its policies and procedures without going beyond that. However, victims of harassment have a tendency to blame themselves. They are often not even aware of what constitutes harassment, and in some cases, whether or not they are being subjected to it. It is in the mission of the athletic department to provide its student-athletes with a safe and enjoyable educational experience. Every resource available should be provided to ensure that this is a reality for all student-athletes.

## Prevention/Evaluation

The survey participants were asked to provide additional information on the methods utilized to proactively prevent incidents of sexual harassment, and the efforts made to evaluate the environment of the department. As indicated in Table 7, only a small percentage of athletic departments utilize background checks to screen prospective employees or coaches for a history of sexual harassment/abuse. A number of respondents indicated that they rely on references provided by the applicant, and will delve further if the situation merits. An even smaller percentage conducts any sort of background check on their prospective student-athletes.

TABLE 7: SEXUAL HARASSMENT PREVENTION

	YES	NO	DON'T KNOW	OTHER	N
BACKGROUND CHECKS ON EMPLOYEES?	36.8% (14)	28.9% (11)	18.4% (8)	15.8% (5)	38
BACKGROUND CHECKS ON COACHES?	39.5% (15)	21.1% (8)	13.2% (5)	26.3% (10)	38
BACKGROUND CHECKS ON STUDENT-ATHLETES?	10.5% (4)	76.3% (29)	10.5% (4)	2.6% (1)	38

While conducting background checks of employees and student-athletes for a history of sexually abusive or harassing behavior is an effective practice, it is not a cost effective one. Most departments conduct a background check of some sort on prospective employees. They also utilize information gleaned from references and other sources to check for red flags in an individual's employment history. If it is not financially feasible for the department to conduct professional background checks on every potential employee, then careful attention must be given to the references. It is not unreasonable to explicitly ask if sexual misconduct has ever been an issue for a prospective employee. At the very least, the department should conduct extensive background checks on employees who will have a lot of contact with their student-athletes, such as coaches and senior level administrators. Situations have arisen in which collegiate athletic departments have hired an individual

only to find out about a history of sexually abusive or harassing behavior. A simple inquisition would have likely uncovered the pattern of behavior and the incident could have been avoided altogether. An athletic department failing to take reasonable precautions in their hiring practices will be found legally negligent if an incident should occur (Rosen, 2003).

The question of conducting background checks on student-athletes is trickier, and one that very few athletic departments employ. It is simply not financially viable for an athletic department with a large number of student-athletes to conduct background checks on every one of their prospects. However, in some peer sexual harassment cases, it is not uncommon that the perpetrator has had a history of sexual misconduct (Schlabach, 2003). When coaches are recruiting a prospective athlete they should be wary of signing athletes that have had these issues in the past. If a coach or administrator has a suspicion about a prospect, then it should be thoroughly investigated and the university admissions office should be consulted before a final decision about the athlete is reached (Rosen, 2003).

Ninety-seven percent of the departments conduct yearly evaluations of their employees, but only 10% specifically inquire about any instances of harassment that their employees may have encountered during that year. Half of the departments surveyed do not specifically ask their student-athletes if they have experienced harassing behaviors over the course of their collegiate careers (Table 8).

TABLE 8: EVALUATION OF INCIDENTS OF SEXUAL HARASSMENT

	YES	NO	DON'T KNOW	OTHER	N
YEARLY EVALUATIONS OF EMPLOYEES?	97.3% (36)	0	0	2.6% (1)	37
SPECIFICALLY ASKS ABOUT EMPLOYEE HARASSMENT?	5.3% (2)	89.5% (34)	2.6% (1)	2.6% (1)	38
SPECIFICALLY ASKS ABOUT STUDENT- ATHLETE HARASSMENT?	42.1% (16)	50% (19)	2.6% (1)	2.6 % (1)	38

Virtually all of the responding departments conduct yearly evaluations of their employees, but only two indicated that they specifically ask whether the employee had experienced any harassing behavior in the previous year. This is a simple question to ask, and it operates on a number of levels. First, if the question is officially incorporated into the evaluation, then it indicates that the department does not display an indifferent attitude towards sexual harassment. Second, this is a great way to diagnose harassing behavior early. If an employee replies "yes," then an investigation can be launched immediately and appropriate action taken. If the employee says "no," then the department has its bases covered. Finally, it demonstrates to the employee that the department cares about providing a safe working environment. Even if the employee is not inclined to report any harassment at the time, they may feel more comfortable to do so in the future (Wolohan, 1995a).

Less than half of student-athletes are asked in their exit interviews if they have encountered sexually harassing or abusive behavior during their athletic careers at the university. This indicates an attitude of "don't ask, don't tell" on the part of the department. If a student-athlete has been victimized, the athletics department needs to know about it. At the very least, they can take measures to prevent it from occurring to student-athletes in the future.

### Survey Respondent Opinions

The survey respondents were given the opportunity to express their opinions on their athletic department's sexual harassment policies and procedures. Specifically, the questions were designed to address policy effectiveness, departmental adherence to the policy and procedures, and the overall climate of the athletic department. The respondents almost unequivocally agree that their department adheres to its sexual harassment policies and procedures, and that their department investigates all the sexual harassment complaints that are brought to their attention. They feel that the overall culture of their department is intolerant of sexual harassment, and provides a non-threatening environment for its student-athletes and employees. They also feel that their student athletes and employees know who they should approach if they are experiencing sexually harassing behavior.

In response to two of the items, however, the respondents were ambivalent, with the highest percentage of answers falling into the "neither agree nor disagree" category. The first item inquired as to whether they felt that their departmental sexual harassment policies and procedures were effective deterrents to sexual harassment. Forty-four percent of the respondents selected a neutral response to this idea. If, as indicated, the

departments in the survey adhere to their policies and procedures, and the respondents are neutral about whether the policies are an effective deterrent, then this suggests there is either a problem with the policies and procedures or with the way they are being administered to the department. It may indicate that these departments need to revisit their policies and procedures and make sure that they are clear and unequivocal in tone. More likely, the problem is a matter of awareness. The evaluation of the educational methods utilized by athletic departments suggested that there was room for improvement. The members of the department must be aware of the policies before they can use them. If student-athletes and employees see that the administration takes the policies to heart, then this will increase the likelihood that they are effective in deterring sexual harassment.

The other item that elicited a neutral response from the participants was that the departmental leaders were proactive about speaking against sexual harassment. This, too, ties into raising awareness about the sexual harassment policy. The leaders in the department should send a more proactive message about the types of behavior expected from student-athletes, coaches, and employees, and this message will trickle down throughout the department. It is relatively easy to talk to coaches about it in coaches' meetings and to ask student-athletes about it during exit interviews. Administrators can make sure that the policies and procedures are advertised through as many channels as possible, and that sexual harassment resources are made available to the department and to the victims of harassment. These are small but proactive steps that can serve to greatly deter instances of sexual harassment.

## CONCLUSION

In general, the respondents to the survey have already implemented the basic requisite elements of sexual harassment policies and procedures. Recommendations were made about how these policies and procedures could be improved and made more legally sound. Athletic departments mostly appear to be lacking in the way they administer their policies and procedures, specifically in the educational and evaluative aspects. As has been reiterated throughout the discussion, it is not sufficient to just have sexual harassment policies in the books. They must be advertised throughout the department, and made a point of emphasis by the senior administrators.

Even though inferential statistics indicate that the results can be extrapolated to the Division IA population, it may not be that simple. None of the departments participating in the survey were currently involved in a sexual harassment investigation or lawsuit. As such, it is a strong possibility that the



sample was self-selecting, resulting in athletic departments currently involved in these types of situations opting not to participate in the survey. Further studies area needed to corroborate this research.

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