



Howling Counsel

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LEGAL SPOTLIGHT

Title IX’s Far Reaching Impact for Universities

Last year was the 40th Anniversary of Title IX, the federal civil rights law that prohibits discrimination on the basis of sex in educational programs and activities receiving federal financial assistance. Most people think of gender equity in college athletics whenever Title IX is mentioned, however, Title IX means so much more. Title IX covers virtually everything that goes on at the university. It applies to matters involving students (i.e. recruitment, student admissions, housing, academic offerings) as well as employees (i.e. employment actions, work environment). Title IX is far-reaching, and most recently, it has received special focus from the U.S. Department of Education-Office of Civil Rights (OCR), the federal agency charged with its enforcement.

Title IX prohibits sex discrimination, which includes sexual harassment (both quid pro quo and hostile work environment) and retaliation (for reporting violations of Title IX). On April 4, 2011, the OCR issued a “**Dear Colleague Letter**”, (guidance document written to educational institutions), which went into great detail about what colleges and universities needed to be doing to prevent and address the sexual harassment of students—

and in particular, sexual violence. It has now been two years since the OCR letter was issued, and educational institutions all over the country have been taking steps to review and implement OCR’s directives and recommendations. In addition, OCR’s enforcement branch has been very active in investigating Title IX issues on a number of campuses (e.g. Yale, Notre Dame, Xavier and UNC Chapel Hill). Such investigations have resulted in resolution agreements requiring several of the institutions to revise (or create) policies and practices for preventing and responding to Title IX issues. Most recently, on May 9, 2013, **OCR issued a letter of findings** to the University of Montana following an investigation and compliance review.

At NC State, initiatives have been developed not only to re-affirm the university’s commitment with Title IX compliance, but to create a culture of respect for gender across campus. Joanne Woodard, Vice Provost for Institutional Equity and Diversity (OIED), is NC State’s Title IX Coordinator. She—along with three Deputy Title IX Coordinators—oversee Title IX compliance at the university. Over the past year, Amy Circosta, Associate

Vice Provost for Equal Opportunity, and a Deputy Title IX Coordinator, and Sarah Lannom, Associate General Counsel, have provided Title IX training and workshops to many groups on campus. These presentations—which are tailored to the particular audience—focus on the departments’ roles and responsibilities with respect to Title IX.

Such educational opportunities are ongoing; if you are a campus partner who has not participated in a Title IX training and would like to schedule one, please contact Ms. Circosta at 513-1234 or Ms. Lannom at 515-2333.

In addition to “live” presentations, OIED and the Office of General Counsel (OGC) are putting the final touches on a web-based Title IX presentation that will be available sometime this summer. To learn more about Title IX and NC State, please visit the **Title IX website**, where you can view the video “What Title IX Means To Me,” (featuring NC State celebrities) and read about campus resources relating to Title IX.

If you have any questions or concerns, please call the Office of Institutional Equity and Diversity at 919-515-3148.



QUESTION OF THE MONTH

“Are university employees allowed to engage in private consulting?”

Yes. The Board of Governors policy on Conflicts of Interest and Commitment, UNC Policy Manual, [300.2.2](#), encourages faculty and non-faculty EPA employees to engage in external professional activities for pay to enhance their own professional development and to benefit the University and society. That policy also recognizes that private consulting can create conflicts of interest and commitment and that employees must be cognizant of the need to address any conflicts and/or perceived conflicts which would detract from their employment responsibilities. Employees are required to provide [notice](#) to their supervisors and seek permission prior to engaging in paid consulting.

For more guidance on private consulting, please contact Judy Curry, Associate General Counsel, at 919-515-2696 and visit the Office of General Counsel’s Webpage on [consulting](#) and Sponsored Programs’ webpage on [external activities for pay](#)

Professional Sports Counseling Panel Helps Student Athletes Take Care of Business

When college athletes have the opportunity to become professional athletes, they are immediately confronted with many new responsibilities, including selecting an agent, negotiating contracts with their agent and their new professional team, and managing their money. At NC State, student-athletes and their families can seek advice about these important matters from a Professional Sports Counseling Panel formed by Chancellor Woodson in 2012 at the recommendation of the Council on Athletics.

The Panel’s members, who are experienced in professional and college sports, contracts, financial management, education, and life skills, include:

Mike Poterala, Deputy General Counsel (Panel Chair); Sherard Clinkscales, Senior Associate Athletics Director; Dr. Monica

Leach, Associate Professor, Social Work; Bill Sloan, Alumni Distinguished Undergraduate Professor, Business Management; and Dewayne Washington, Former NC State and NFL football player.

NCAA rules permit the Panel to:

- Help student-athletes determine their market value (e.g., potential salary, draft status) through contact with agents or representatives of professional teams;
- Advise student-athletes about future professional careers;
- Assist student-athletes in all phases of selecting an agent;
- Meet with the student-athlete and representatives of professional teams;
- Assist student-athletes in securing tryouts with professional teams;

- Review proposed professional sports contracts; and
- Assist student-athletes with securing disability insurance.

In addition to offering these services free of charge to individual student-athletes, the Panel also offers educational programs to teams on topics such as managing your finances as a new college graduate, understanding the role of players unions and agents, and why it is dangerous to give someone your power of attorney. The Panel’s goal is to help each student-athlete become the “CEO” of their business affairs.

To request support from the Panel or to learn more, please contact Mike Poterala at (919) at mike_poterala@ncsu.edu or call 515-0234.

U.S. Supreme Court Sides with Monsanto in Seed Suit

Recently, the Supreme Court ruled unanimously that farmers could not use Monsanto’s patented genetically modified soybeans to create new seeds without paying the company a fee. In *Bowman v. Monsanto Company*, an Indiana farmer, Bowman, planted seeds he bought from a grain elevator in hop that many of the seeds contained Monsanto’s Roundup Ready gene and that he could

replant any further seeds produced from the grain-elevator seeds for the following year’s crop. Bowman argued that a doctrine called patent exhaustion allowed him to do what he liked with the products he had obtained legally. However, the Court held that while the exhaustion doctrine would allow Bowman to consume or resell the patented soybeans he purchased from the grain elevator,

it does not enable him to make additional patented soybeans without Monsanto’s permission. Although the ruling had implications for many aspects of modern agriculture, businesses based on vaccines, cell lines, and even software, the Court made its decision narrow, stressing that it addressed only the situation before the court, rather than all instances involving a self-replicating product.

2013 Legal Symposium Recap—The second annual legal symposium for university leaders, “Trending Now” was held on April 10, 2013 at the Monteith Research Center. The symposium was well attended and covered an array of trending topics such as privacy of your work space, serving alcohol at university events, new

data sensitivity framework, FERPA and student recommendations as well as doing business through the university versus an LLC. A real world case study, *White v. Trew*, was presented as part of the discussion on defense of NC State employees. The symposium concluded with a reception. Special thanks to Gregg Zarnstoff, Director of

Trademark Licensing for his presentation on using the university’s name, logos and marks; and Will Cross, Librarian, for co-presenting on copyright and fair use. Hold the date for next year’s symposium—April 2, 2014.