



U.S. DEPARTMENT OF EDUCATION
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OFFICE FOR CIVIL RIGHTS
SOUTHERN DIVISION

DISTRICT OF COLUMBIA OFFICE
District of Columbia, Virginia, North Carolina

December 20, 2000

Return Receipt Requested

Ms. Susan Ehringhaus
Vice Chancellor
and General Counsel
University of North Carolina
at Chapel Hill
Campus Box 9100
Chapel Hill, North Carolina 27599

Re: OCR Complaint No. 11-00-2099

Dear Chancellor Ehringhaus:

This letter is to inform you of the disposition of the above-referenced complaint of discrimination, filed by Jeffrey J. Bullock, Sr. (the Complainant) on July 25, 2000, with the District of Columbia Office of the Office for Civil Rights (OCR), U.S. Department of Education (Department), against the University of North Carolina at Chapel Hill (University). In the complaint, the Complainant alleged that after he filed a sexual harassment complaint with the University in March 2000, he was retaliated against when the Chair of the Chemistry Department filed a disciplinary charge against him alleging that he filed a false claim of sexual harassment. The Complainant further alleged that the Chair discriminated against him on the basis of sex because he did not file similar disciplinary charges against females who filed sexual harassment complaints.

OCR has responsibility for enforcing Title IX of the Education Amendments of 1972, 42 U.S.C. § 1681 *et seq.* (Title IX), and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex by recipients of Federal financial assistance from the Department. OCR also has responsibility for enforcing Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d *et seq.*, and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, and national origin. The regulatory prohibition against retaliatory acts, set forth at 34 C.F.R. § 100.7(e), provides that a recipient or other person shall not intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title VI or because he or she made a

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complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the laws OCR enforces. This prohibition is incorporated by reference in the Title IX regulation at § 106.71. The University is a public education institution receiving financial assistance from the Department, and therefore is subject to the provisions of Title IX and its implementing regulation.

In reaching a determination on these allegations, OCR reviewed the University's relevant policies and procedures, as well as other documentation submitted by the Complainant and by the University. OCR also conducted interviews with the Complainant and with University staff. After reviewing the evidence, OCR has determined that there is insufficient evidence to support a finding of retaliation or discrimination on the basis of sex under Title IX. This letter contains OCR's analysis of the issues raised in the complaint.

Retaliation

The Complainant alleged that after he filed a sexual harassment complaint against the chemistry laboratory teaching assistant (T.A.), Professor Edward T. Samulski, Chair of the Department of Chemistry (Chair), filed retaliatory disciplinary charges against him.

The Title IX regulation, at 34 C.F.R. § 106.71, prohibits retaliatory discrimination against individuals for the purpose of interfering with any right or privilege protected by Title IX. To establish a violation of this provision, a preponderance of the evidence must show that the University acted against the Complainant for reasons related to the exercise of his rights under Title IX and its implementing regulation. An initial case of retaliation can be established with regard to this allegation if the evidence shows that he engaged in a protected activity related to Title IX and was subjected to adverse action. It must also be established that the University was aware of this protected activity at the time University personnel took the alleged adverse action and that there is evidence of a causal relationship between the protected activity and the adverse action, frequently shown by the closeness in time of the protected activity and the adverse action. If the University articulates a reason for the action in question and OCR finds it to be a legitimate nondiscriminatory reason and not a pretext or excuse for prohibited discrimination, OCR will not find a violation of Title IX and its implementing regulation.

OCR has determined that the Complainant's filing of a sexual harassment complaint with the University on March 5, 2000, is a protected activity under Title IX. The University's sexual harassment policy and procedures encourage students who are filing such complaints against University staff to attempt to resolve the matter through administrative review, and the evidence indicates the Complainant requested such a review. On March 6, 2000, the Chair became aware of the Complainant's charges involving his Department when he was contacted via e-mail by Dean Appiaris, a person outside the Department asked to conduct the administrative review. On May 5, Dean Appiaris issued the administrative review report, which concluded that "[t]here was absolutely no evidence to support [the Complainant's] allegations against [the T.A.]" The Chair subsequently filed disciplinary charges against the Complainant on June 8, 2000, based on his belief that the Complainant had violated two sections of the Code of Student Conduct in connection with his sexual harassment complaint. The filing of the disciplinary charges constitutes an adverse action. Because only three months elapsed between when the

Complainant filed his sexual harassment complaint on March 6 and when the Chair filed his disciplinary charges against the Complainant on June 8, OCR will infer causation as a result of proximity in time. Thus, OCR has determined that an initial case of retaliation has been established.

Continuing its analysis, OCR has determined that University staff had a legitimate, nondiscriminatory reason for filing disciplinary charges against the Complainant. The Chair filed disciplinary charges against the Complainant under two provisions of the Instrument of Student Judicial Governance Code of Student Conduct: (1) Furnishing false information with the intent to deceive to members of the University community who are acting in the exercise of their official duties (Section II.D.1.b); and (2) willfully obstructing or interfering with the normal operation and function of the University and its personnel by engaging in individual conduct which, because of its threatening, intimidating, and disruptive nature, prevents a member of the University community from performing legitimate activities (Section II.D.1.h). The University's Sexual Harassment Policy and Procedure also contains provisions for disciplinary action for charges found to have been intentionally dishonest or made in willful disregard of the truth.

As noted in the administrative review report issued on May 5, 2000, witnesses gave consistent accounts that they did not see any indication that the T.A. touched the Complainant inappropriately during class or any other time. Instead, witnesses stated that it was the Complainant who portrayed unusual behavior toward the T.A. by stalking her before class and asking her for her home telephone number so he could contact her after school hours. Witnesses also stated that the Complainant said that because he was in the intelligence field in the military, the Complainant could track down the T.A. whenever the Complainant needed to. The report also noted that the Complainant was in academic difficulty in the T.A.'s class and that the Complainant may have filed his claim of sexual harassment in order to be removed from the class. The report, which the Chair read prior to filing the disciplinary charges, concluded that "although no evidence came to light to support any allegation of sexual harassment, there was clear and credible evidence that [the Complainant] engaged in inappropriate behavior towards [the T.A.]" OCR reviewed the administrative review report and determined that in carrying out the review process the University followed its established procedures, investigated the allegations appropriately, and reached credible findings. Therefore, OCR has determined that it was reasonable for the Chair to file disciplinary charges against the Complainant on the basis of the report.

In a telephone interview with Ms. Sandra Gibson, the investigator assigned to the complaint, on November 15, 2000, the Chair stated that he had never met the Complainant prior to June 20, 2000, and that prior to the sexual harassment complaint he had had no dealings with the Complainant. OCR asked the Chair what led him to file the disciplinary charges against the Complainant. In response, he stated that when he learned that the T.A. had been cleared on sexual harassment charges and he saw how upset she was and noted that some things that the Complainant said were contradictory, he wondered whether there was something he should do about it. He knew from reading the student handbook and from speaking with school officials that he had the option of filing disciplinary charges against the Complainant. He stated that he felt that the Complainant interfered with the Department because having to find the Complainant a new section in order to separate him from the T.A. resulted in the Department having to ask another student to switch classes.

OCR has uncovered no evidence to suggest that the Chair's response is an excuse for discrimination. The evidence reviewed by OCR does not indicate any reason for the action of the Chair other than those based on a reasonable application of the University's policies and procedures. In light of the information provided, OCR has determined that an initial case of retaliation was established by the evidence. However, because the University provided a legitimate nondiscriminatory reason for the adverse action that was not an excuse for discrimination, OCR has determined that there is insufficient evidence to find that the Complainant was subjected to retaliation prohibited by Title IX.

Discrimination Based on Sex

In the Complainant's complaint, he also alleged that the Chair discriminated against him on the basis of sex because he filed disciplinary charges against him for filing a sexual harassment complaint, but did not file similar charges against females filing sexual harassment complaints.

The Title IX regulation, at 34 C.F.R. § 106.31(b)(4), provides that no person shall, on the basis of sex, be subject to separate or different rules of behavior, sanctions, or other treatment.

In investigating such a complaint of different treatment on the basis of sex, OCR determines first whether the Complainant was treated differently than similarly situated females—that is, females who filed complaints of sexual harassment. If there were similarly situated females, OCR then compares the Complainant's treatment to that of the females. If OCR finds that the females were treated differently, OCR determines the University's reason for the different treatment and then examines any reason offered to determine if it is a legitimate nondiscriminatory reason and not a pretext or excuse for discrimination. As noted above with respect to the analytical approach to retaliation, if the University articulates a reason for the different treatment and OCR finds the reason to be a legitimate nondiscriminatory reason and not a pretext or excuse for prohibited discrimination, OCR will not find a violation of Title IX and its implementing regulation.

OCR requested from the University the number of students, broken down by gender and graduate or undergraduate status, who filed sexual harassment complaints or grievances in the 1999-2000 school year, as well as the number of students who had disciplinary charges filed against them after they filed sexual harassment complaints or grievances. The documentation provided indicates that 8 undergraduate and 4 graduate female students filed sexual harassment complaints, with no disciplinary charges filed against any of them. The Complainant was the only male student who filed a sexual harassment complaint with the University that year, and the Complainant was the only student who subsequently had disciplinary charges filed against him. Therefore, OCR has determined that the Complainant was treated differently than the 12 similarly situated female students.

In examining the reason for the different treatment, OCR learned that, according to the University data, the Complainant was also the only student who was found in the administrative review process to have no basis for his complaint. OCR has already determined in relation to the retaliation allegation that the University's reason for the Chair's action in filing disciplinary charges against the Complainant is a legitimate nondiscriminatory reason: The Chair could have reasonably concluded from the administrative review report that because the Complainant filed a

baseless sexual harassment complaint, the Complainant had violated the Student Code of Conduct. Further, OCR has determined in relation to the retaliation allegation that this reason was not an excuse for discrimination.

Based on the above information, OCR has determined that the Complainant was treated differently than a group of similarly situated female students. However, because the University provided a legitimate nondiscriminatory reason for the different treatment that was not an excuse for discrimination, OCR has determined that there is insufficient evidence to find that the Complainant was subjected to discrimination prohibited by Title IX.

Conclusion

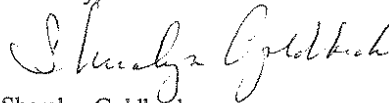
This letter concludes OCR's investigation of the complaint. We are closing the complaint effective as of the date of this letter.

Please note that the recipient may not harass, 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 had 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 a complaint or participating in an OCR 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. 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 personal privacy.

We appreciate the cooperation of University staff during the course of this investigation. If there are any questions regarding the above, please contact Ms. Gibson at (202) 208-7704.

Sincerely,



Sheralyn Goldbecker
Team Leader