



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS
CHICAGO OFFICE
NOV 19 2008

Dr. Mauri A. Ditzler
President
Monmouth College
700 East Broadway
Monmouth, Illinois 61462-1963

Re: OCR Docket # 05082099

Dear Dr. Ditzler:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed against Monmouth College (College) alleging discrimination on the bases of age and sex.

The complaint alleged that the College subjected a student at the College (Student A) to discrimination based on age and sex when (1) his American History professor (Professor) engaged in a series of harassing acts toward him based on sex and age during the first term of the 2007-08 academic year, and the College failed to respond appropriately and (2) the College dismissed him in December 2007.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681, and its implementing regulation at 34 C.F.R. Part 106. Title IX prohibits discrimination on the basis of sex in any education program or activity operated by a recipient of Federal financial assistance. OCR is also responsible for enforcing the Age Discrimination Act of 1975 (Age Act), 42 U.S.C. §§ 6102-6103, and its implementing regulation at 34 C.F.R. Part 110. The Age Act prohibits discrimination on the basis of age by recipients of Federal financial assistance. As a recipient of Federal financial assistance from the Department, the College is subject to these laws.

OCR reviewed information provided by Student A and the College and interviewed Student A and College personnel. OCR has determined that allegation #1 will be administratively closed as of the date of this letter and that the evidence is not sufficient to establish that the University subjected Student A to discrimination as alleged in allegation #2. The reasons for these determinations are discussed below.

Background

Student A was a student at the College during the 2007-08 academic year and was enrolled in an American History course in fall 2007. Student A asserted that throughout the fall 2007 term, the instructor of this course (the Professor) subjected him to

500 W. MADISON ST., SUITE 1475, CHICAGO, IL 60661
www.ed.gov

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

harassment based on sex and age. In particular, he said the Professor refused to keep an appointment with him and required a third party to be present when meeting with him, limited his class participation, moved him to another seat, made derogatory comments about him to other students, refused to accept late assignments, made negative comments about soldiers in Iraq, threatened to quit the History Club if Student A went on a trip with it, and filed a harassment complaint against him.

According to the College, Student A behaved inappropriately during the American History course by speaking often for long periods of time, therefore monopolizing class time, and that he also changed his seat to sit next to a female student and, the Professor believed, bothered the student. The College stated that he also acted inappropriately outside of class towards the Professor by "following her and waiting for her, and appearing frequently in places where she was, and remaining to talk to her for long periods of time." Among the inappropriate behavior cited by the College was an incident in which, at a College event, Student A grabbed the Professor's arm and later hugged her, making her feel uncomfortable. The College stated that on a number of occasions, the Professor talked to Student A about his inappropriate behavior but Student A did not change his behavior.

Student A acknowledged hugging the Professor but stated that it was a spontaneous hug because she had complimented his event presentation and denied acting inappropriately toward her outside of class. He also denied acting inappropriately during class or toward the female student he was sitting next to.

Allegation #1 – Harassment based on sex and age

On November 15, 2007, Student A filed a complaint with the College against the Professor alleging that because of his age, gender, and veteran's status, the Professor engaged in a series of harassing acts toward him during the first term of the 2007-08 academic year. The College's procedures for harassment complaints against faculty indicate that grievances are investigated by a faculty investigative team. The team reports its findings and recommendations to the Dean of the Faculty who meets with the accused faculty member to discuss the team's findings and recommendations and, if necessary, to seek resolution. If no resolution is reached, then the Dean of Faculty renders a decision.

The College assigned a team to investigate Student A's complaint. The team met with Student A on November 26 and November 28 to clarify his complaint and interview Student A with regard to his assertions. In the meetings, Student A also identified possible witnesses and provided documents to support his complaint. The Director of Personnel, a member of the team that investigated Student A's complaint against the Professor, told OCR that the team interviewed the Professor, witnesses named by Student A, and other witnesses to investigate the alleged harassment. Following the conclusion of its investigation, the College notified Student A by letter dated December 19, 2007, that the complaint was "not supported by the evidence and [was], therefore, without

merit" and that he could appeal the team's decision to the University President. Student A did not appeal this decision.

OCR policy provides that when the same complaint allegation of discrimination has been investigated through a recipient's internal grievance procedure and OCR determines that the resolution of the complaint met OCR regulatory standards (i.e., all allegations were investigated, appropriate legal standards were applied, and any remedies secured meet OCR's standards), then OCR does not proceed with its investigation. The information shows that College's investigative team interviewed Student A and other witnesses, reviewed documents, applied appropriate legal standards, and determined that the alleged complaint was not supported by the evidence. As the College's investigation of Student A's allegation of harassment based on sex and age by the Professor met OCR regulatory standards in addressing the allegation, OCR is closing Allegation #1 effective the date of this letter.

Allegation #2 – Dismissal from the College based on sex and age

Facts

The College Disciplinary Procedures for 2007-08 state the following conduct may lead to discipline: "creating, maintaining, or participating in a situation detrimental to the health, safety, or welfare of the community, including tampering with fire equipment, bomb threats, and similar conduct" and "violent acts, either covert or overt, against any other member of the College community, including physical assault, nuisance or threatening telephone calls, and any individual or group effort designed to harass or hold up to ridicule any other member of the College community." The disciplinary procedures state that, under any circumstances, the "College shall not be required to conduct hearings or due process before imposing sanctions, suspension, or dismissal." The procedures also state, "The College reserves the right to determine what constitutes inappropriate behavior and the appropriate sanctions at its unreviewable discretion. The list of sanctions includes but is not limited to the following: suspension, dismissal, fines, work assignments, restitution for damages, and exclusion from extracurricular activities."

The College's policies prohibiting discrimination based on age and gender, among other factors, set forth procedures for investigating alleged violations of the policy by students. The Office of Student Affairs (OSA) conducts an investigation, after which, if the investigation reveals that a disciplinary violation has occurred, the Dean of Students meets with the accused student to discuss the results of the investigation and potential disciplinary sanctions. If there is a disagreement at this meeting about the facts of the complaint or about particular disciplinary sanctions, a hearing is offered to the student.

According to the College, on November 7, the Professor filed a harassment complaint against Student A. In her complaint, the Professor wrote, "[Student A] is trying to intimidate me in the classroom with hostile verbal and non verbal behavior. These behaviors are unwelcome and have made me very uncomfortable and even frightened. I believe that [Student A] does not accept me as an authority in the classroom because of

my gender and does this in a very aggressive manner.” She also said that he created an intimidating environment that affected her ability to teach effectively and gave examples of his behavior, which included violating her personal space, raising his voice, challenging her knowledge, and physically blocking her exit from the classroom.

Information provided to OCR shows that the College investigated the Professor’s allegations. The team that investigated these allegations was different than the team that investigated Student A’s allegations of harassment by the Professor. The College’s investigative team, in a letter dated November 19, 2007, addressed to the Associate Dean of Students (Associate Dean), found that Student A’s behaviors in the classroom created an intimidating and hostile work and learning environment as a result of unwelcome, hostile, and inappropriate conduct. The team stated that other faculty members and students characterized Student A’s behavior as “aggressive, argumentative, distracting, belligerent, and intimidating.” It found that Student A raised his voice in a belligerent and aggressive manner to the Professor, on one occasion physically blocking her exit from the classroom and on another occasion inappropriately challenging her refusal to accept a late assignment. The team recommended that Student A be dismissed from the College.

On November 26, the Associate Dean met with Student A to share with him verbally the team’s findings in response to the Professor’s complaint. According to the College, because the Associate Dean and Student A did not reach a resolution at this meeting, the Associate Dean notified Student A at this meeting that a hearing would be scheduled for December 3 to determine whether harassment had occurred and, if so, what disciplinary sanction would be levied against Student A. Because of the subsequent events that led to the dismissal of Student A, as described below, this hearing was never held.

According to Student A, on November 30, he met with the Associate Dean to get a copy of the College’s findings from its investigation of the Professor’s harassment complaint against him. While the College said the Associate Dean provided Student A a copy of the findings at this meeting, Student A said that he could not get a copy of the College’s findings from the Associate Dean, so he went to the Office of the President and Academic Dean (OPAD) to make an appointment with the President.

The Associate Dean told OCR that at the end of his November 30 meeting with Student A, Student A told him about a friend who had made a bomb threat in Senator Hillary’s Clinton’s office and said something to the effect that this was what happened when you “screw with us 40 year old guys.” One secretary in the OSA and one in the OPAD office told OCR that Student A made similar statements to them. The secretaries and the Associate Dean told OCR that Student A was agitated when he made the statements and did not appear to be attempting to be humorous. In addition to the comment about the possible bomb in Senator Clinton’s office, the various witnesses indicated his remarks included that he was having difficulty with the “lies and treachery,” just like Senator Clinton was, that people “gotta watch us 40-year old guys,” and that he had a “veritable arsenal” in his possession.

Student A acknowledged to OCR that that he made comments to the secretaries in the OPAD about the person who made a bomb threat but denied that he made any such comments to the Associate Dean or a secretary in the OSA. Student A stated that he did not recall making a statement about "lies and treachery" and denied that he said he had an arsenal in his possession. He told OCR that his demeanor was normal when he was talking to the secretaries in the OPAD and said that his statements were not meant to be threatening.

The Associate Dean told OCR that he determined the statements to be threatening, especially considering Student A's problems with the Professor, and after consulting with the Vice President, made the determination to dismiss Student A. The Associate Dean advised Student A by letter dated December 3, that he was dismissed from the College because of threatening statements made to College staff, pending a review of the circumstances, and that in the interim he was not to be present at any College facility or event. By letter dated December 7, the Associate Dean advised Student A of what the review of the circumstances would entail. In the letter, the Associate Dean identified four provisions of the College Disciplinary Procedures that Student A violated, including prohibitions against creating, maintaining, or participating in a situation detrimental to the health, safety or welfare of the community and against violent acts, either overt or covert, against any member of the College community. The letter further notified Student A of his opportunity to respond to the charges. Student A responded to and denied the charges by letter to the Associate Dean dated December 10. Following a review of Student A's response, the Associate Dean advised Student A by letter dated December 17 that he was upholding his dismissal from the College and also advised him of his right to appeal his dismissal to the College President. On December 26, Student A appealed his dismissal to the President of the College. On January 9, 2008, the President upheld the dismissal and banned Student A from campus and all College events.

The College informed OCR that three other students, all of whom are male and are younger than Student A, were dismissed from the College during the 2007-08 academic year for violating the College Disciplinary Procedures. The Associate Dean told OCR that one of the three students was dismissed because he physically assaulted a College employee and threatened a security guard, another was dismissed because he blocked the Associate Dean's way out of his office and threatened him, and the third was dismissed because he drove while intoxicated, stole a motor vehicle, was under an arrest warrant, and was on probation for prior disciplinary matters, including violence. He said that there were no students who engaged in behavior similar to that of Student A, but who were not dismissed from the College. Student A was unable to identify any similarly-situated students who were not dismissed from the College.

Analysis and Conclusion

The regulation implementing Title IX, at 34 C.F.R. § 106.31(a), states, in pertinent part, that no person shall, on the basis of sex, be excluded from participation in, be denied the

benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity:

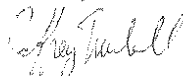
The regulation implementing the Age Act, at 34 C.F.R. § 110.10(c), states that no person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity

In determining whether a recipient subjected a student to discrimination on the basis of age or sex in violation of these regulations, OCR looks to whether there were any apparent differences in the treatment of similarly-situated students on the basis of age or sex. If so, OCR assesses the recipient's explanation for any differences in the treatment of similarly-situated students to determine if the reasons are legitimate or are merely a pretext for unlawful discrimination. Additionally, OCR examines whether the recipient treated the student in a manner that was consistent with its established policies and procedures and whether there is any other evidence of discrimination based on age or sex.

In this case, the evidence revealed that students younger than Student A were also dismissed from the College, and there is no evidence to indicate that female or younger students similarly-situated to Student A were treated differently with respect to discipline. The information shows that three witnesses substantiated that, on November 30, 2007, Student A made a series of threatening remarks. The evidence revealed that, based on these remarks, in light of his problems with the Professor, Student A was dismissed from the College for violating College policies concerning conduct on campus. The evidence also shows that the College followed its discipline policy and procedures in dismissing Student A. Accordingly, there is insufficient evidence for OCR to conclude that the College discriminated against Student A based on age or sex as alleged.

Based on the above, OCR is closing this complaint effective the date of this letter. We wish to thank you, your staff, and Scott Warner, attorney for the College, for the courtesy extended to OCR during this investigation. If you have any questions, please contact John Goodemote at 312-730-1582 or by email at John.Goodemote@ed.gov.

Sincerely,



Jeffrey Turnbull
Team Leader