

June 12, 2001

Ref. 06012026

Dr. Gary Cook, President
Dallas Baptist University
3000 Mountain Creek Parkway
Dallas, Texas 75211-9299

Dear Dr. Cook:

This letter is to notify you of the determination of the U.S. Department of Education, Office for Civil Rights (OCR), Dallas Office, regarding the resolution of the above-referenced complaint. In this complaint, which was filed on January 31, 2001, the complainant alleged that the Dallas Baptist University (DBU), Dallas, Texas, discriminated against him on the basis of national origin, in violation of Title VI of the Civil Rights Act of 1964. He also alleged that the DBU discriminated against him on the basis of disability, in violation of Section 504 of the Rehabilitation Act of 1973 and Title II of the American with Disabilities Act of 1990 (Title II). Further, he alleged that DBU discriminated against him by creating a sexually hostile environment, in violation of Title IX of the Education Amendments of 1972.

Specifically, the complainant alleged the following:

1. The DBU discriminated against him on the basis of national origin by creating a hostile environment when:
 - a. A police officer, who was making a presentation to the juvenile delinquency class in which he was enrolled during Fall 2000, made derogatory remarks against Hispanics (i.e., most Hispanic teenagers are in gangs and are protected by the Hispanic culture, and many Hispanics sniff glue);
 - b. The instructor in the juvenile delinquency class in which he was enrolled told him to stand in a corner of the room after he voiced his opposition to the derogatory remarks made by the police officer; and

Donald A. May EAS 6/12/01
OCM/COE 6/12/01

Ray de la May FZ Acting Team Leader 6.12.01

- c. A guest speaker, in a multicultural perspectives class in which he was enrolled during Spring 2001, presented a power point presentation which included a statement that Mexican Americans practiced witchcraft and sorcery.
2. The DBU retaliated against him because he engaged in protected activity (i.e., voiced his opposition to derogatory remarks made against Hispanics by a police officer in his juvenile delinquency class) by:
 - a. The instructor in the juvenile delinquency class telling him to stand in a corner of the room after he voiced his opposition to derogatory remarks made by a police officer during a presentation in class, and
 - b. A DBU administrator in the adult continuing education program telling him that he might not graduate on time and that the police would harass him if he did not withdraw his complaint against the instructor of the juvenile delinquency class in which he was enrolled.
3. The DBU discriminated against him on the basis of disability by failing to provide him an academic adjustment (i.e., additional time to complete assignments) in all of the classes in which he was enrolled, with the exception of his religion class.
4. The DBU created a sexually hostile environment when it allowed a student to show a film that included nudity and obscene language as a part of her presentation in a juvenile delinquency class in which the complainant was enrolled.

OCR is responsible for enforcing regulations that prohibit discrimination on the bases of race, color, national origin, disability, sex and age (as it relates to the provision of student services). However, OCR's enforcement authority, with one exception, only covers institutions that receive or benefit from Federal financial assistance from the Department or an agency that has delegated investigative authority to this Department.

The exception applies to OCR's responsibility as a designated agency under Title II. OCR's coverage under Title II extends to all public elementary and secondary education systems and institutions, public institutions of higher education, and vocational education (other than public schools of medicine, dentistry, nursing or other health related schools), and public libraries.

OCR determined that the DBU is a recipient of Federal financial assistance from the U. S. Department of Education. Therefore, OCR has jurisdiction to investigate this complaint under Title VI, Title IX, Section 504 and Title II.

In reaching a determination with regard to the allegations raised in this complaint, OCR reviewed information provided by the complainant and the DBU. Such information included DBU's "Sexual and Discriminatory Harassment" policies and procedures, DBU procedures for requesting an academic adjustment, external correspondence and internal memoranda, syllabi checklist, the complainant's class performance, and his pertinent medical records. In addition, OCR also conducted interviews with the complainant, DBU administrative and teaching staff, and current and former DBU students. As a result of our investigation, OCR has determined that there is insufficient evidence to support a finding of a violation of Title VI, Title IX, Section 504 and Title II, with regard to all of the allegations investigated.

By allegation, the following is the factual basis for our determination:

1. **The DBU discriminated against the complainant on the basis of national origin by creating a hostile environment when:**
 - a. **A police officer, who was making a presentation to the juvenile delinquency class in which he was enrolled during Fall 2000, made derogatory remarks against Hispanics (i.e., most Hispanic teenagers are in gangs and are protected by the Hispanic culture, and many Hispanics sniff glue).**

The complainant alleged that a Dallas police officer, serving as a guest speaker in his Criminal Justice 3302-02 class (juvenile delinquency), made derogatory comments about Hispanics during his presentation. The complainant further alleged that the police officer's comments created a hostile environment in the class. To investigate this allegation, OCR reviewed DBU's policies and procedures regarding discriminatory harassment, the course description, and internal memoranda regarding the incident. Further, students who were enrolled in the class, including the complainant, the class instructor, and DBU administrators were interviewed regarding this allegation.

According to OCR policy guidance, a racial hostile environment is an environment in which there are acts of a racial nature that are sufficiently severe, pervasive, or persistent to create an intimidating or offensive educational environment. Acts of a racial nature include verbal statements and physical conduct imposed on the basis of an individual's or a group's race, color, or national origin.

Information that students and the instructor provided during OCR interviews revealed that the officer discussed his experiences in policing gang activity in an area of Dallas that has a significant Hispanic population. Based on OCR's interviews with students and the instructor, there was no evidence to indicate that

the police officer's comments were acts of a racial nature that were sufficiently severe, pervasive, or persistent to create an intimidating or offensive educational environment.

Further, based on interviews with students of various races/ethnicities, the instructor, and DBU administrators, OCR's investigation revealed no evidence that at any time, as a result of the police officer's presentation, were students in the class, including the complainant, treated in a different manner, on the bases of race, color, or national origin. OCR found no evidence that a hostile environment was created in the class. Consequently, OCR determined that there is insufficient evidence to support this allegation.

- b. The instructor in the juvenile delinquency class in which he was enrolled told him to stand in a corner of the room after he voiced his opposition to the derogatory remarks made by the police officer.**

The complainant alleged that he was treated in a discriminatory manner because of his national origin, when the instructor in the class allegedly told him to stand in the corner during the class period. In OCR's interview with the instructor, she stated that she did not tell the complainant to stand in a corner of the room. The instructor stated that the incident to which the complainant refers occurred immediately after the class period ended when only a few students remained in the class. She stated that the complainant had presented his class assignment immediately after the police officer's speech. However, the instructor stated that the complainant criticized the police officer's comments, instead of focusing on his assignment. In an effort to speak to the complainant privately (away from other students) regarding his presentation, the instructor stated that she asked him "to step to the side of the room."

Attempts to contact the students who remained in the class were not successful. Further, OCR's investigation revealed no evidence to indicate that the instructor's actions were an attempt to treat the complainant in a different manner, because of his national origin. Consequently, OCR determined that there is insufficient evidence to support this allegation.

- c. A guest speaker, in a multicultural perspectives class in which he was enrolled during Spring 2001, presented a power point presentation which included a statement that Mexican Americans practiced witchcraft and sorcery.**

The complainant alleged that the statements made in the presentation created a hostile environment in his Sociology 4301-01 class (multicultural perspectives). To investigate this allegation, OCR reviewed DBU's policies and procedures regarding discriminatory harassment and the course description. Further, students enrolled at DBU, including the complainant, the class instructor, and DBU administrators were interviewed regarding this allegation.

Information that students and the instructor provided during OCR interviews revealed that the comments made in a power point presentation were actually part of a student group class presentation, and not that of a guest speaker. Further, interviews with students and the instructor revealed that when the comments were made, the instructor interrupted the students' presentation and discussed the validity of the comments and racial stereotyping. Based on OCR's interviews with students and the instructor, there was no indication that the comments presented in the power point presentation were acts of a racial nature that were sufficiently severe, pervasive, or persistent to create an intimidating or offensive educational environment.

Further, based on interviews with students of various races/ethnicities, the instructor, and DBU administrators, OCR's investigation revealed no evidence that at any time, as a result of the presentation, were students in the class, including the complainant, treated in a different manner, on the bases of race, color, or national origin. OCR found no evidence that a hostile environment was created in the class. Consequently, OCR determined that there is insufficient evidence to support this allegation.

2. **The DBU retaliated against the complainant because he engaged in protected activity (i.e., voiced his opposition to derogatory remarks made against Hispanics by a police officer in his juvenile delinquency class) by:**
 - a. **The instructor in the juvenile delinquency class telling him to stand in a corner of the room after he voiced his opposition to derogatory remarks made by a police officer during a presentation in class.**

In order to establish that retaliation occurred, as alleged in this complaint, it is necessary for OCR to determine that: (1) the complainant was involved in a protected activity, as defined by OCR's policies and regulations; (2) the individual(s) responsible for the alleged adverse actions was aware of the complainant's involvement in the protected activity; (3) the complainant suffered or was subjected to adverse actions; and (4) there was a causal connection or nexus, i.e., proximity in time, between the protected activity and the adverse action. If these elements are proven, retaliation is established, unless the DBU provides a legitimate, nondiscriminatory, nonpretextual reason for its action.

In resolving this complaint, OCR obtained and analyzed verbal and written information and documentation from the DBU and the complainant. This information was analyzed in light of the elements needed to establish retaliation.

With regard to the first element of retaliation, OCR obtained documentation from the DBU that revealed that the complainant was engaged in protected activity. Specifically, evidence indicates that on September 22, 2000, the complainant voiced concerns in his Criminal Justice 3302-02 class regarding comments a guest speaker made that the complainant believed to be derogatory toward Hispanics.

In addition, OCR was able to establish that the instructor was aware of the complainant's involvement in the protected activity, in that she was present when the complainant's comments were made in the class. OCR also established that the complainant was subjected to the alleged adverse action (private conference with the instructor in the corner of the room). Further, OCR found evidence of a causal connection between the adverse action and the protected activity because both occurred on the same day.

Because OCR established the first four elements of retaliation, it was necessary to determine whether the DBU had a legitimate, nondiscriminatory reason for its action. OCR determined that the instructor did have a legitimate, nondiscriminatory reason for her actions (see Allegation 1b). The instructor stated that she was attempting to speak privately to the complainant regarding the assignment he had just presented to the class on September 22, 2000. Further, OCR's investigation revealed no evidence to indicate that the instructor's legitimate nondiscriminatory reason for her action was a pretext for retaliation against the complainant.

For the reasons stated above, OCR was unable to establish that retaliation occurred. Therefore, OCR will take no further action regarding this specific complaint allegation.

- b. A DBU administrator in the adult continuing education program telling him that he might not graduate on time and that the police would harass him if he did not withdraw his complaint against the instructor of the juvenile delinquency class in which he was enrolled.**

As stated in response to Allegation 2(a), OCR established that the complainant was engaged in protected activity on September 22, 2000. Further, the administrator in question, the academic counselor in the College of Adult Education, was aware of the complainant's involvement in protected activity on November 29, 2000, when they met to discuss his allegations of discriminatory treatment.

However, the third element of retaliation – the complainant suffered or was subjected to adverse action – could not be established. The academic counselor denied making the alleged statements. Information DBU provided revealed that the complainant graduated according to his academic schedule on May 18, 2001, having endured no delay. Further, the complainant provided no evidence, nor did OCR find any evidence, of police harassment.

OCR's investigation also revealed that on November 29, 2000, the complainant wrote a letter to you and informed you that the academic counselor had "negotiated an amicable decision" that resolved his complaint. Based on documentation the complainant and DBU provided and the interviews conducted, OCR found no evidence to indicate that the complainant was coerced into writing the letter to you or into his decision that his DBU complaint was resolved.

For the reasons stated above, OCR was unable to establish that retaliation occurred. Therefore, OCR will take no further action regarding this specific complaint allegation.

3. **The DBU discriminated against the complainant on the basis of disability by failing to provide him an academic adjustment (i.e., additional time to complete assignments) in all of the classes in which he was enrolled during the 2000 fall semester, with the exception of his religion class.**

To investigate this allegation, OCR reviewed DBU's policies and procedures for the provision of academic adjustments to students with disabilities, documentation the DBU and the complainant provided regarding his disability, and information provided to the complainant's instructors regarding his disability, during the Fall 2000 semester. OCR also interviewed the complainant, the former Dean of Students, and the complainant's instructors who were available at the time of OCR's on-site visit to DBU.

OCR's investigation revealed that on October 10, 2000, the complainant provided medical information regarding his disability (carpal tunnel syndrome). On that same date the complainant's physician recommended that the complainant be given "more time to prepare assignments." Documentation DBU provided to OCR further indicates that in a memorandum dated October 16, 2000, the complainant's four instructors during the Fall 2000 semester were informed of his requested academic adjustment.

OCR interviewed three of the four instructors in whose class the complainant was enrolled during the Fall 2000 semester. Two of the three instructors who were interviewed recalled their receipt of the memorandum. The third instructor did not recall receiving it. However, all three instructors indicated that when the complainant

requested the prescribed academic adjustment, it was provided. OCR found no evidence to the contrary. Additionally, the complainant's transcript revealed that he earned an "A" in one class and an "A minus" in the other three classes in which he was enrolled during the Fall 2000 semester. Consequently, based on the documentation reviewed and the interviews conducted, OCR determined that there is insufficient evidence to support this allegation.

4. **The DBU created a sexually hostile environment when it allowed a student to show a film that included nudity and obscene language as a part of her presentation in a juvenile delinquency class in which the complainant was enrolled.**

To investigate this allegation, OCR reviewed DBU's policies and procedures regarding sexual harassment, the course description, and internal memoranda regarding the incident. Further, students who were enrolled in the class, including the complainant, the class instructor, and DBU administrators were interviewed regarding this allegation.

According to OCR policy guidance, sexual harassment can include unwelcome verbal, nonverbal, or physical conduct of a sexual nature. If a student is sexually harassed, the harassing conduct can deny or limit, on the basis of sex, the student's ability to participate in or to receive benefits, services, or opportunities in the school's program.

Information that students and the instructor in the Criminal Justice 3302-02 class provided during OCR interviews revealed that during a class presentation students showed a portion of a movie that included female nudity and obscene language. OCR further learned that because of the content of the movie, the instructor stopped the film, discussed her concern about its content, and within 11 days of its viewing, sent an e-mail apology to each student. Students interviewed confirmed the instructor's verbal and written apologies.

Further, as a result of the incident in the Criminal Justice 3302-02 class, DBU developed a policy regarding student presentations and suggested that all instructors provide the policy in writing to their students. The policy reads in part:

"Student presentations should not use recorded video or audio material that contains obscene language or material of a sexually explicit nature."

Based on OCR's interviews with students, the instructor, and DBU administrators, there was no evidence to indicate that due to the nudity and obscene language in the movie that any students, including the complainant, were denied or limited, on the basis of sex, in their ability to participate in or to receive benefits, services, or opportunities in the class. Further, based on interviews with students, including females, OCR's investigation revealed no evidence that at any time, as a result of the video presentation, were students in the class, including the complainant, treated in a different manner, on the basis of sex.

Documentation that DBU provided and interviews with students and the instructor also disclosed no evidence that the presentation of the movie excerpt was an act of a sexual nature that was sufficiently severe, pervasive, or persistent to create an intimidating or offensive educational environment. OCR found no evidence that a sexually hostile environment was created in the class. Consequently, OCR determined that there is insufficient evidence to support this allegation.

In summary, as related to Allegation 1, OCR determined that there is insufficient evidence to support a violation of Title VI. With regard to Allegation 2, OCR is unable to establish that retaliation occurred. Concerning Allegation 3, OCR determined that there is insufficient evidence to support a violation of Section 504 and Title II. Finally, with regard to Allegation 4, OCR determined that there is insufficient evidence to support a violation of Title IX. Consequently, we are closing this complaint as of the date of this letter. This letter is not intended, nor should it be construed, to cover any other matters that may exist, and are not specifically discussed herein.

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

Thank you for your cooperation and that of Mr. Brent E. Christopher, General Counsel, and other staff, in resolving this matter. If you have questions or concerns, you may write me at the above address or call me at (214) 880-2493.

Sincerely,

Donald R. Moy
Equal Opportunity Specialist

cc: Mr. Brent E. Christopher, General Counsel
and Assistant to the President