



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS
SOUTHERN DIVISION, DALLAS OFFICE

REC 05 2002

Ref: 06012091

Dr. Larry R. Faulkner, President
The University of Texas at Austin
Main Building 400 (G3400)
Post Office Box T
Austin, Texas 78713-8920

Dear Dr. Faulkner:

The U.S. Department of Education, Office for Civil Rights (OCR), Southern Division, Dallas Office, has completed the investigation of the complaint received on September 27, 2001, against the School of Music of the University of Texas (UT), Austin, Texas. The complainant alleged that UT discriminated against her, on the basis of sex in violation of 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 (2001). Specifically, the complainant alleged that UT 1) created a sexually hostile environment during the 2000-2001 academic year in violation of 34 C.F.R. § 106.31 (a), and 2) failed to process her grievance alleging a sexually hostile environment in a prompt and equitable manner in violation of 34 C.F.R. § 106.8 (b).

Prior to conducting this investigation, OCR determined that UT is a recipient of Federal financial assistance from the U.S. Department of Education. Therefore, OCR has jurisdiction to investigate this complaint under Title IX.

OCR has determined that there is insufficient evidence to support a finding of a violation of Title IX with regard to allegation one. Regarding allegation two, the information gathered disclosed a compliance concern regarding UT's Title IX grievance procedure. On September 27, 2002, UT voluntarily submitted a Commitment to Resolve (CTR), which, upon full implementation, will satisfactorily resolve this compliance concern. The bases for OCR's determinations are summarized below.

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Our mission is to ensure equal access to education and to promote educational excellence throughout the nation.

Allegation 1

UT created a sexually hostile environment during the 2000-2001 academic year in violation of 34 C.F.R. § 106.31 (a).

The complainant's allegation concerned the UT School of Music (SOM). Therefore, OCR investigated the allegation that a sexually hostile environment existed at the SOM during the 2000-2001 academic year.

Title IX and its implementing regulation prohibit discrimination based on sex. Sexual harassment of students is a form of prohibited sex discrimination. Hostile environment sexual harassment is sexually harassing conduct (which can include unwelcome sexual advances, requests for sexual favors or other verbal, nonverbal, or physical conduct of a sexual nature) by an employee, by another student, or by a third party that is sufficiently severe, persistent or pervasive to limit a student's ability to participate in or receive benefits, services or opportunities in the institution's program. If OCR establishes that conduct of a sexual nature occurred, OCR will examine additional factors to make a determination of whether a sexually hostile environment exists.

In December 2000, the complainant filed with UT a complaint alleging sexual harassment. In September 2001, the complainant filed her complaint of discrimination with OCR. During our investigation, OCR obtained and reviewed documents from UT and the complainant. In April 2002, OCR conducted an onsite visit and gathered additional information via interviews from the following sources: the complainant, witnesses referred to OCR by the complainant, UT administrators and staff selected by OCR, SOM faculty, randomly selected SOM students, and student forums.

OCR investigated the eight incidents that formed the factual basis for the complainant's belief that a sexually hostile environment existed at the SOM. The alleged incidents included: 1) a conversation between the complainant and SOM professor "A" during which she stated concerns about professor "B", 2) a further exchange during the same conversation between the complainant and professor "A" at which time he recommended that she take professor "C's" composition class, 3) the complainant avoiding her composition jury because of alleged sexual harassment at prior juries, 4) an incident at an off campus party at the home of a SOM faculty member, 5) a professor's brushing up against the complainant in a hallway and pushing her on the shoulder during a student's performance, 6) rumors regarding faculty/student dating, 7) comments made by professors about female students during SOM performances, and 8) a professor's encouraging faculty members to date students. OCR interviewed SOM faculty and students identified by the complainant as persons who either witnessed the alleged incidents or allegedly had knowledge of the sexual harassment.

OCR corroborated the occurrence of incidents one and two. These incidents occurred during a conversation between SOM professor "A" and the complainant regarding whose composition class she should take. When the complainant stated her concern to the professor about her view that professor "B" conducted himself inappropriately with

female students, professor "A" was silent for a moment and then went on to recommend professor "C". The complainant viewed his lack of response to her statement about "B" as being supportive of a sexually hostile environment. Though she did not voice a concern to professor "A" about professor "C", the complainant advised OCR that she viewed the suggestion to take his class as being supportive of a sexually hostile environment in that she believed professor "C" was involved in an affair with one of his students. Neither the failure to respond to the complainant's statement regarding professor "B" nor the suggestion that she take the class with professor "C" involved conduct of a sexual nature.

Further, the evidence gathered, regarding incident three, did not corroborate the occurrence of events that the complainant alleged led her to avoid her composition jury during the 2000-2001 academic year. Specifically, no information supported the complainant's statement that during her juries in previous years professor "B" made a comment to her about her having studied nursing and his knowing whom to call if he had a backache and made comments about women baring their breasts in public in order to contribute to a breast milk drive. OCR interviewed professor B and other SOM professors who participated in prior juries with professor "B." Professor B denied making the comments and the other professors on the juries stated that they did not hear him make these statements.

As to incident four, the information gathered was conflicting. The complainant alleged that during an off-campus party, professor "B" invited her to go to a local strip club and announced to a small group of people that she would be performing at the club wearing her dog collar and chain. One student whom the complainant identified as having been in the room could not corroborate that the invitation was extended and the statement made. While another student in attendance at the party indicated that the complainant contemporaneously repeated the essence of the invitation and statement to him during the party, he stated that he did not hear the invitation and statement. Additionally, several other witnesses who were in a position to hear the alleged invitation and statement did not corroborate that it occurred.

The information gathered did not corroborate the occurrence of incident five. Professor "B's" allegedly brushed up against the complainant in a hallway and pushed her on the shoulder during another student's performance. There were no witnesses to the hallway incident and a professor who was sitting next to professor "B" advised OCR that he did not observe the alleged pushing on the shoulder. Even if the hallway and shoulder events had occurred as alleged, as described, they do not constitute conduct of a sexual nature.

OCR corroborated incident six. We determined that there were rumors in the SOM regarding student/faculty dating. However, the investigation did not reveal any evidence of actual student/faculty dating during the 2000-2001 academic year, despite the rumors.

The evidence is conflicting and insufficient regarding the occurrence of incident seven. The complainant alleged that comments were rumored to have been made about female students by professors during SOM performances. Although a student witness stated that

professors made comments about the attractiveness of students who performed at a jury, the professors allegedly involved denied making the comments. Even if the comments had occurred as alleged, as described, they do not constitute conduct of a sexual nature.

The information gathered did not substantiate the occurrence of incident eight, professor "B" allegedly encouraging faculty to date students. The various students and faculty members interviewed did not provide any information substantiating that professor "B" encouraged faculty to date students and there was no evidence that faculty/student dating had occurred during the 2000-2001 academic year.

As stated previously, OCR also conducted interviews with SOM students not identified by the complainant for their knowledge regarding any sexual harassment at the SOM. This included forums and group interviews attended by a total of 38 students and separate interviews of three individual students. They provided no information that indicated the existence of sexual harassment or a sexually hostile environment.

Conclusion

The OCR investigation did not establish that sexual harassment occurred at the SOM of UT. Therefore, there is insufficient evidence to support a finding of a violation of Title IX relative to allegation 1.

Allegation 2

UT failed to process the complainant's grievance alleging a sexually hostile environment in a prompt and equitable manner in violation of 34 C.F.R. § 106.8 (b).

The Title IX implementing regulation provides that a recipient of Federal financial assistance shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints of discrimination on the basis of sex. In investigating or otherwise resolving alleged incidents of sexual harassment of students, OCR will consider whether (1) the school has a policy prohibiting sex discrimination under Title IX and effective Title IX grievance procedures; (2) the school appropriately investigated or otherwise responded to allegations of sexual harassment; and (3) the school has taken immediate and appropriate corrective action responsive to the sexual harassment. A school must promptly investigate an allegation of sexual harassment to determine what occurred and then take appropriate steps to resolve the situation. In all cases, the inquiry must be prompt, thorough, and impartial. It is not required that a recipient adopt or provide separate procedures for sexual harassment complaints.

OCR determined that when the complainant filed her complaint with UT in December 2000, UT did not have Title IX grievance procedures as required by the Title IX implementing regulation. The complainant filed her complaint utilizing the UT sexual harassment grievance procedure contained in its "Sexual Harassment and Sexual Misconduct" policy. UT's investigation of the complaint remained pending on

September 27, 2001, when OCR received the complainant's complaint of discrimination against UT. OCR determined that UT made no discernable progress in the nine-month interval towards reaching a disposition with regard to the complainant's UT complaint.

In November 2001 UT had a policy entitled "Nondiscrimination Policy", which UT advised OCR was its Title IX grievance procedures. OCR's analysis of both the "Nondiscrimination Policy" and the "Sexual Harassment and Sexual Misconduct" policy revealed statements and omissions, which precluded them from providing for prompt and equitable relief of complaints. The policies, among other things, were not clearly delineated as containing grievance procedures, did not designate a timeframe to respond to the grievant regarding the action UT would take regarding the complaint and limited the remedies UT would make available to students and employees pursuant to an investigation. Interviews with UT administrators and staff revealed unawareness as to the specific steps to take when presented with a Title IX complaint, although the policies named these persons as points of contact for a complainant.

Conclusion

UT failed to provide grievance procedures that provide for prompt and equitable resolution of complaints of discrimination based on sex consistent with the Title IX implementing regulation. On September 27, 2002, UT submitted the attached voluntary Commitment to Resolve (CTR). Upon full implementation of this CTR, OCR has determined that the CTR will satisfactorily resolve allegation 2. As is our procedure, OCR will monitor UT's implementation of this CTR through submissions of progress reports demonstrating that the CTR provisions have been completed. However, should UT fail to fully implement the action steps as set forth in the CTR agreement, OCR will immediately resume its case processing activities in accordance with OCR procedures.

This letter is not intended nor should it be construed to cover any other matters that may exist and are not specifically discussed herein.

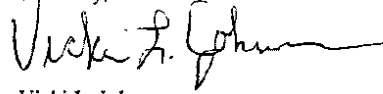
Under OCR procedures, we are obligated to advise the institution against whom a complaint is filed that intimidation or retaliation against a complainant is prohibited by regulations enforced by this agency. Specifically, the regulations enforced by OCR, directly or by reference, state that no recipient or other person shall intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with any right or privilege secured by regulations enforced by OCR or because one has made a complaint, testified, assisted or participated in any manner in an investigation, proceedings or hearing held in conjunction with a complaint.

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.

Page 6 – Dr. Larry R. Faulkner, President

OCR appreciates the assistance and cooperation provided throughout the course of this investigation. If you have any questions regarding this letter or any other civil rights related issues, I may be reached at (214) 880-2467.

Sincerely,

A handwritten signature in black ink, appearing to read "Vicki L. Johnson", with a long horizontal flourish extending to the right.

Vicki L. Johnson
Team Leader
Office for Civil Rights
Southern Division-Dallas Office

Enclosure

OFFICE OF THE PRESIDENT
THE UNIVERSITY OF TEXAS AT AUSTIN

P.O. Box T • Austin, TX 78713-8920
512-471-1232 • FAX 512-471-8102

Commitment to Resolve
The University of Texas at Austin
OCR Case Number: 06012091

In order to resolve the allegation in the above referenced complaint regarding the prompt and equitable resolution of complaints of discrimination based on sex, without any admission of liability or violation of Title IX of the Education Amendments of 1972 (Title IX), The University of Texas at Austin (UT), assures the Office for Civil Rights (OCR), that it will implement the commitments specified below.

1. Pursuant to Title IX, UT assures OCR that it will implement the commitments specified below, within the specified timeframes:
 - a. By October 1, 2002, UT will designate at least one employee as Title IX Coordinator, at least one employee as Section 504 Coordinator and at least one employee as Title II Coordinator. These persons are the responsible employees to coordinate its efforts to comply with 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 108 (2001) which prohibit discrimination on the basis of sex; and Section 504 of the Rehabilitation Act of 1973, 20 U.S.C. §794 (amended 1992), and its implementing regulation at 34 C.F.R. Part 104 (2001), and Title II of the Americans with Disabilities Act of 1990 (Title II) 42 U.S.C. §12132, and its implementing regulations at 28 C.F.R. Part 35 (2001) which prohibit discrimination on the basis of disability.
 - b. By October 1, 2002, UT will publish the name, office address, and telephone number of the individual(s) designated as the Coordinator(s) by sending electronic messages to employees and to students enrolled at UT.
 - c. By November 15, 2002, UT will publish the name, office address, and telephone number of the individual(s) designated as the Coordinator(s) by inserting notices on electronic employee applications and other university publications that provide general information to employees about employee services and University policies. In addition, by inserting notices in the on-line versions of the current student general information bulletin, course schedule, and other university publications that provide general information to students about student services and

university policies and inserting notices on electronic student application materials.

- d. By November 15, 2002, UT will begin conspicuously posting notices of the name, office address, and telephone number of the individual(s) designated as the Coordinator(s) in the following manner and in the following places:

On campus bulletin boards, in campus housing, in the student union, on The University's web site, and disseminated through organizational notifications and other sites on campus where general campus information is disseminated to students and employees.

- e. By November 15, 2002, UT will provide OCR with a copy of the notification information referred to in 1.b - d above.
 - f. By November 15, 2002, and as print publications are revised, UT will begin including the name, office address, and telephone number of the individual(s) designated as the Coordinator(s) in the student handbook and course catalogs and other publications in which general campus information is disseminated to students and employees.
 - g. By January 31, 2003, UT will provide OCR with copies of any and all publications that have been revised to incorporate the specific notification information specified in 1.f above and that have been distributed between the date of this agreement and January 15, 2003. By August 31, 2003, UT will provide OCR with copies of any other publications revised to incorporate the specific notification information and printed in the 2002-2003 academic year that have not been previously provided to OCR. Information submitted to document such revised publications should include, but not necessarily be limited to, student general information bulletins, course schedules, The University website, organizational notifications and any other sites and/or publications in which general campus information is disseminated to students and employees.
2. By February 28, 2003, UT will review and revise its current Title IX grievance procedures for the prompt and equitable resolution of complaints alleging discrimination based on sex to comply with the requirements of a Title IX grievance procedure pursuant to 34 C.F.R. §106.8(b). The Title IX grievance procedures should include, but are not limited to, the following components.

- The form in which a written complaint is to be filed;
- Timeframes for filing a complaint;
- Timeframes for the conducting of an investigation;

- Manner in which an investigation is to be conducted, and how a decision will be made;
 - Process to ensure the impartiality of an investigation;
 - Right to present information relevant to the complaint;
 - Afford the parties the opportunity to be advised by an individual of his or her choice throughout the proceeding;
 - The time within which a complainant shall expect a response regarding the disposition of the investigation;
 - The basis upon which the disposition is made and the authority of the person(s) involved in the decision of an equitable and prompt remedy;
 - Afford the complainant an opportunity to comment/dispute the investigative findings;
 - Prohibition against retaliation; and
 - Confidentiality of complaint filing, investigation and disposition.
3. Title IX does not require a separate sexual harassment complaint procedure. UT assures OCR that if it chooses to continue its practice of having a separate sexual harassment complaint procedure, it will comply with the requirements of a Title IX grievance procedure pursuant to 34 C.F.R. §106.8(b).

The Title IX Grievance Procedures, and any separate sexual harassment grievance procedures, will:

- a. Be contained within a document whose title and content clearly reflect that the grievance procedures are encompassed therein.
- b. Clearly delineate the scope of the grievance procedures i.e., what it is, who may utilize it and who it applies to.
- c. Clearly state that the grievance procedure may be used to file a complaint by and against both students and employees and define the term "grievance."
- d. Reflect that UT will document the filing of all complaints and conduct an appropriate investigation of all complaints filed pursuant to the grievance procedures.
- e. Designate a timeframe to respond to a complainant and document this response. The response will acknowledge receipt of the complaint and what action(s) UT will take.
- f. Describe the range of action(s) UT will take on a complaint after an appropriate investigation is conducted.

- g. Contain an explanation and description of the criteria to be utilized by UT to determine the nature and extent of the investigation to be conducted. The method of investigation will not limit the remedies available to address any discrimination based on sex, including sexual harassment.
 - h. Not contain any language that alters the regulatory requirement that the grievance procedures be used to address complaints of discrimination based on sex or language that restricts its usage to complaints alleging "severe" discrimination or alleging a pattern of discrimination.
 - i. If the grievance procedures contain a definition of "discrimination," the definition should not contain any language that limits discrimination to conduct directed at an individual.
 - j. Ensure that any disciplinary investigation procedures are not applied to or take the place of investigations of complaints of discrimination based on sex, including sexual harassment, that are processed pursuant to the grievance procedures.
4. By December 13, 2002, UT will provide OCR with a draft of the revised grievance procedures for OCR review and comment.
5. UT will provide students and employees with written notice regarding the availability of the Title IX grievance procedures and the manner in which they may obtain a copy of the procedures. By March 14, 2003, UT will send electronic messages containing the notice to employees and insert the notices in the on-line versions of university publications that provide general information to employees about employee services and University policies. In addition, UT will insert such notices in the on-line versions of the current student general information bulletin, course schedule, and other university publications that provide general information to students about student services and university policies. By August 31, 2003, UT will insert such notices in the print version of the student general information bulletin.
6. By April 15, 2003, UT will provide OCR with a detailed narrative describing the manner and various avenues in which notice of the grievance procedures was disseminated and copies of any and all notifications. UT will include a copy of the final revised Title IX grievance procedures.
7. By August 31, 2003, and thereafter, UT will publish the Title IX grievance procedures in general information bulletin, course schedule, and other university publications that provide general information to students/employees about student/employee services and university policies, organizational notifications and other sites on campus where


general campus information is disseminated to students/employees. By September 15, 2003. UT will provide OCR copies of these publications.

8. UT will conduct training for the following University officials as follows:
- Training for University officials and administrator directly involved in processing, investigating and/or resolving complaints of sex discrimination will be completed by March 14, 2003.
 - Training for college deans will be completed by April 14, 2003.
 - Training for department chairs will be completed by May 15, 2003.
 - Training for faculty member graduate advisors will be completed by August 31, 2003.

The training will focus on the identification of discrimination based on sex, including sexual harassment, and what steps UT will take when presented with complaints of discrimination on the basis of sex. Such training will provide attendees with essential guidance and instruction for recognizing and appropriately addressing allegations and complaints of sexual harassment and an understanding of The University's Title IX grievance procedures.

- a. Within two weeks of the completion of each training session described above, UT will submit to OCR a description of the training conducted, the date(s) held, attendance sheets for those in attendance and the name/title and qualifications of the individual(s) who developed the training module(s) (for computer based training) and conducted the training session(s) (for classroom training).
9. By August 31, 2003, UT will provide a list to OCR of all Title IX complaints of discrimination on the basis of sex filed during the spring 2003 semester. Please provide documentation which provides the following information: the number of Title IX complaints filed, person(s) with whom they were filed, date filed, person(s) who conducted the investigation, and date of resolution. Also include copies of: the complaint, the investigation report, and the disposition of the complaint.

Executive Approval



Dr. Larry R. Faulkner, President
The University of Texas at Austin

Date: 9/27/02