



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS
SOUTHERN DIVISION - DALLAS OFFICE
Arkansas, Louisiana, Mississippi, Oklahoma, Texas
1999 BRYAN STREET, SUITE 2600
DALLAS, TEXAS 75201

JUN 10 1998

Ref: 06972162

Dr. Donald W. Zacharias, President
Mississippi State University
Mississippi State, MS 39762

Dear Dr. Zacharias:

This is to notify you of the determination of the U.S. Department of Education, Office for Civil Rights (OCR), Southern Division, Dallas Office, regarding the resolution of a complaint which was filed on September 22, 1997, against the Mississippi State University (MSU), alleging retaliation and discrimination on the basis of sex. Specifically, the complainant alleged that the MSU athletic department and hostess organization retaliated against her for filing an internal complaint/grievance against the university by refusing to have contact with her, refusing her membership in the hostess organization, and by refusing her participation in the January 1997 official football recruitment visits. In addition, the complainant alleged that MSU discriminated against her on the basis of sex because she is a female, single parent.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681, in institutions or organizations that receive or benefit from Federal financial assistance from the Department of Education. OCR has established that the MSU is a recipient of Federal financial assistance from the U.S. Department of Education. Therefore, OCR has jurisdiction to investigate the allegations in this complaint under Title IX.

To reach a determination, OCR conducted interviews with MSU personnel, students and the complainant, and reviewed and analyzed documentation and MSU records submitted by both the MSU and the complainant.

Allegation I:

The complainant alleged that the Mississippi State University retaliated against her because she filed an internal complaint/grievance against the university. She alleges the following as adverse actions taken against her.

- The football office staff refused to have contact with her.
She was refused membership in the hostess organization.

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- o The hostess organization refused to allow her to participate in the 1997 football recruitment official visits.
- o A coach advised her that no one from the recruiting office could have contact with her.
- o The athletic department refused to let her talk to the Hostess Advisor or Assistant to the Hostess Advisor of the MSU hostess organization.
- o When she called the hostess organization to inquire about membership, they refused to return her calls.

Findings:

To establish a prima facie case of retaliation it must be shown that: (1) the complainant engaged in a protected activity; (2) the recipient had knowledge of the complainant's participation in a protected activity; (3) the recipient took adverse action against the complainant (4) there is a causal connection between the adverse action and the complainant's participation in the protected activity. If prima facie proof is established, then it must be determined whether there is a legitimate, nondiscriminatory reason for the alleged adverse action that is not pretextual.

OCR established that the complainant filed an internal complaint against MSU on October 9, 1996, and thereby engaged in a protected activity. The complainant alleged in the internal complaint that because she was pregnant, members of the athletic staff and the advisor of the hostess organization were trying to get her to step down from the organization, and that the athletic department did not want her to participate in the hostess activities.

According to documentation provided by the MSU, during October-November of 1996, the MSU EEO Officer conducted an investigation of the complainant's allegation and informed the athletic staff, which includes the Hostess Advisor and Assistant to the Advisor of the MSU hostess organization, about the complaint. Therefore, they were aware that an internal complaint had been filed against the MSU by the complainant.

According to the complainant, after she filed the internal complaint with the MSU, she tried to talk to the Hostess Advisor or Assistant regarding membership in the hostess organization but they refused to take or return her calls. She indicated that this resulted in her denial of membership in the hostess organization. She said that her son's father, a student athlete, told her that his football coach told him to tell her that the Hostess Advisor was told that she was not to have any contact with her. She said she called several times to get information about joining the hostess organization for the following year, and every time she called they told her that the Hostess Advisor was not in. During OCR's interviews of the complainant's son's father, he said that his football coach had told him to tell the complainant that the Hostess Advisor was told that she could not talk to her. He said that he did not know why

the Hostess Advisor could not talk to the complainant. During interviews with OCR, the football coach said that he did not recall telling the complainant's son's father that the Hostess Advisor could not talk to her. The hostess advisors, athletic staff, and student workers all denied the complainant's allegations that they refused to take her calls and denied her membership in the organization.

OCR's review of the complainant's participation in the hostess organization revealed that she was the vice-president of the hostess organization during the 1996-97 school year and participated in hostess functions throughout the football season. The records provided by MSU indicated that the complainant participated as a Bull Dog Hostess through the last football game on November 23, 1996. There is no evidence that she was denied participation during the 1996-97 hostess year. OCR's analysis of the activities of the Bull Dog Hostess organization revealed that, other than the January official visits (discussed below), the next available opportunity for the complainant to participate in the hostess organization did not re-enroll for the 1997-98 school year. The records show that the complainant's last enrollment was the spring of 1997. Since the complainant was not an MSU student she was not eligible to be a member of the hostess organization in 1997-98, according to the organization's constitution. Therefore, she was not denied membership in the hostess organization nor did she suffer adverse action.

The complainant also alleged that the hostess organization refused to allow her to participate in the January 1997 football recruitment official visits. The investigation confirmed that the complainant was not selected to participate in the January 1997 official visits during which prospective football student athletes visited the MSU campus. OCR's review of the selection process for hostesses to participate included interviews with the advisor to the hostess organization, athletic staff members and hostesses. In addition, OCR reviewed and analyzed the data provided by the MSU. There was inconclusive information as to how the hostesses were selected to participate in the January 1997 official visits. There was conflicting information between witnesses as to the process that was used, and there was no documentation to substantiate any of the witness statements. OCR was able to establish that there were about 49 hostesses during the 1996-97 school year and approximately 13 of these hostesses were selected to participate in the January 1997 official visits. According to MSU records, there were about 19 student athletes who visited the MSU campus during the January 1997 official visits. Of the 19 student athletes, who participated in the official visits, 14 participated on January 10, 19, 1997, 8 on one day and 6 on the other. The remaining five students participated one day each during three other days. OCR found that only 13 out of 49 hostesses were selected to participate, leaving 35 hostesses not selected. According to school records, none of the 35 hostesses who were not selected had filed an internal complaint. OCR found that they were treated in the same manner as the complainant, who had filed an internal complaint. OCR was unable to find evidence that would substantiate the complainant's allegation that she was denied participation in the January 1997 football recruitment official visits as a form of retaliation because she filed a complaint.

Allegation 2:

The complainant alleges that the Mississippi State University discriminated against her on the basis of sex because she is a female, single parent. She alleges that:

- o All of her professors except the department head considered her reasons for her request for an "incomplete" in one of her classes due to "immediate circumstances" (recent child birth and single parent) as valid reasons for postponement of a class grade.
- o The academic advisor circumvented her rights to a grade appeal, by telling her that she had not been discriminated against and that if she filed a grade appeal against the department head he would deny it.
- o The vice provost also circumvented her rights to a grade appeal by advising her that if she filed a grade appeal and it got to his level he would deny it.
- o She was not allowed to participate in the hostess organization, but the father of her son was allowed to continue to participate on the football team.
- o She was refused membership in the hostess organization.
- o The athletic department refused her the opportunity to participate in the January 1997 football recruitment official visits.

Findings:

According to the complainant, during the fall of 1996 she asked her class professors for an "incomplete" in all of her classes, due to her pregnancy. She explained that the MSU had a policy that stated that due to "immediate circumstances" students could request an "incomplete" in their classes. She said that all of her professors honored her request. However, during the following spring semester she again was having problems and again asked for an incomplete in her classes. One of her professors, who is also the department head, denied this request. She explained that this professor had given her an incomplete the previous semester, but refused to give her an incomplete the spring semester. She indicated that she believed that this was due to her being a female, single parent.

During OCR's interview with the professor in question, it was revealed that the professor gave her an incomplete for her fall semester Psychology 3343 class, but the complainant did not enroll in his spring semester class. He stated that when he gave the complainant an "incomplete" for her fall semester class it was agreed that she had until the end of the spring semester to complete the course requirements. He said that the complainant completed all of the course assignments, but failed the tests and therefore was given an "F" for the class. He said that after the grade was issued the complainant wanted him to remove the F and extend

the incomplete until the summer. He said that he informed the complainant that he could not do that and told her that she could request an appeal of her grade. OCR's review of the complainant's official academic records established that the complainant had not enrolled in the professor's class during the spring semester. OCR's review of the MSU policy for an incomplete reveals that students have 30 calendar days from the date of the student's next enrollment to fulfill the course requirements. The policy further states "Exception to this policy should be discouraged. However, if any exceptions are considered, they must be approved by the faculty member's department head and dean, and copies of these approvals placed on file in the dean's office." OCR's analysis of MSU's records revealed that the professor did not request an exception to deviate from the policy. The evidence shows that MSU failed to follow its policy by giving the complainant more than 30 calendar days without getting approval. However, this was not adverse to the complainant. OCR's analysis of the complainant's and recipient's information did not reveal evidence to substantiate that the complainant was denied a request for an incomplete in one of her classes as alleged.

The complainant alleged that when she was refused an incomplete, she talked to the vice president for academic affairs and the vice provost (associate dean) regarding an appeal of the grade for the incomplete, and was told that if she filed a grade appeal they would just deny the appeal. During OCR's interview with the vice president for academic affairs, he said that his calendar showed that he met with the complainant on June 10, 1997, but that he did not recall the meeting. He said that he had no record of her filing a grade appeal. He denied telling the complainant that if she filed a grade appeal he would deny the appeal. During interviews with OCR, the associate dean also stated that he did not tell the complainant that if she filed a grade appeal he would deny it. He said he did not recall talking to the complainant about a grade appeal. He did, however, recall talking to the complainant about withdrawing from the university a few years ago. During further interviews with OCR, the complainant was unable to provide additional information or documentation or names of witnesses that would substantiate her allegations.

The following allegations of denial of participation in the hostess organization and denial of participation in the 1997 official visits were discussed under allegation one regarding retaliation.

- o She was not allowed to participate in the hostess organization, but the father of her son was allowed to continue to participate on the football team.
- o She was refused membership in the hostess organization.
- o The athletic department refused her the opportunity to participate in the January 1997 football recruitment official visits.

As indicated under allegation one, there was no evidence to substantiate that the complainant suffered adverse action or was denied participation in the hostess organization. In addition, OCR reviewed the complainant's allegation regarding denial of participation in the official

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visits of January 1997. As indicated under allegation one, it was found that the complainant was not selected to participate in the official visits. However, OCR did not find evidence that the reason the complainant was not selected was because she was a female single parent.

Based on the findings summarized above, OCR concludes that there is insufficient evidence support a finding of a violation under Title IX with regard to the complainant's allegations. Therefore, OCR is closing this case 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 OCR receives such a request, we will seek to protect, to the extent provided by law, personal information which, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

If you have any questions, please contact me at 214/880-4907.

Sincerely,

Robert Ramirez
Equal Opportunity Specialist
Southern Division
Office for Civil Rights