



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, SOUTHERN DIVISION-DALLAS OFFICE
TEXAS, ARKANSAS, LOUISIANA, MISSISSIPPI, OKLAHOMA

1999 Bryan Street · Room 2600 · Dallas, Texas 75201 · (214)-880-2459

JUL 27 1999

Case No. 06992039

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Dear (b)(7)(C)

The U.S. Department of Education, Office for Civil Rights (OCR), Dallas Office has reached a determination in the above referenced complaint. The complaint, received on January 29, 1999, alleged that the Sam Houston State University (SHSU) discriminated against you 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; and, on the basis of race in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, and its implementing regulations at 34 C.F.R. Part 100. Specifically, you alleged the following:

1. You were denied and excluded from research opportunities because of your race.
2. You were denied financial assistance in the form of fellowships, grants, and teaching opportunities because of your race.
3. You were subjected to sexual harassment, i.e., "sexual advances," by a professor and when you refused the advances you were given a "C."
4. You were racially harassed by a professor who limited your participation in class discussion and "cut you off" in class.
5. You were retaliated against by the SHSU because you filed grievances. The SHSU retaliated against you by not intervening when you raised concerns about a professor harassing you, by providing adverse information that denied you a fellowship, and by denying an appeal of your fall 1998 grade.

This agency is responsible for determining whether organizations that receive or benefit from Federal financial assistance from the U.S. Department of Education or an agency that has delegated authority to this Department are in compliance with Title IX and Title VI. In pertinent part, Title IX states that no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance from the Department. Additionally, Title VI states that no person in the United States shall, on the basis of race, color and national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance from the Department. The SHSU is a recipient of Federal financial assistance. Therefore, OCR had jurisdiction to investigate this complaint under Title IX and Title VI.

In order to resolve the allegations raised in the complaint, we conducted an on-site investigation, reviewed SHSU policies and procedures and gathered information through interviews with you, University staff, and witnesses. Based on an analysis of this information, we determined that there is insufficient evidence to support a violation of Title IX and Title VI regarding the allegations contained in the complaint. Provided below are the bases for our findings.

Allegation One

With regard to allegation one, that you were denied and excluded from research opportunities because of your race, OCR reviewed documentation and information gathered during interviews. Specifically, you alleged that you were not provided assistance for research for publication. You indicated that some of the students were asked by the professors to assist in research for publications and no one asked you. You indicated that you asked two professors to assist you but they did not.

A review of information provided during interviews with OCR indicated that there were numerous graduate students who conducted research for publication without faculty members. It was also indicated that students co-published and co-authored with professors. However, publishing was not a requirement for doctoral students. It was indicated that generally professors and students would seek someone to work with who held common interests.

Information obtained during interviews with seven of your former professors revealed that only one professor stated he had been asked to assist you in research for publication. Two professors stated that you talked with them about research for publication but neither professor recalled being asked to assist you in research for publication.

(b)(7)(C)

During interviews with the professor who said that you had asked him for assistance, he said he talked to you about a variety of subjects and topics and agreed to assist you in research. The professor said he discussed meeting with you to discuss the topic further but you never got back with him. The professor stated that you delayed the research because of your class work. Later, you and the professor did collaborate. An examination of a proposal/abstract prepared by the professor revealed that you were listed as co-author. However, the professor indicated that this research was dropped after you were terminated from the program.

Based on these findings, the evidence does not support your allegation that professors at SHSU failed to provide you with research assistance for publication because of your race.

Allegation Two

With regard to allegation two, that you were denied financial assistance in the form of fellowships, grants, and teaching opportunities because of your race, OCR reviewed information obtained in applications and gathered during interviews. The Associate Dean for the College of Criminal Justice stated that the college did not award grants.

You indicated that you did not submit a written application for the fall of 1998 because it was not required. You further indicated that you complained to the Graduate Dean of Studies when you did not receive financial assistance and you were told to put your request for a position in writing. However, you did not. You told the Graduate Dean that you were applying verbally.

OCR was provided the names and applications of sixteen (16) doctoral students who applied for fellowship and assistantship positions in the spring of 1998 for the 1998-99 school year. The Associate Dean indicated that in the fall of 1998 two others students, who had not submitted an application, were awarded two doctoral teaching fellowships. The Dean indicated that in both instances there were unusual circumstances that warranted the award of fellowships. OCR's review of the ethnicity of these students revealed that one was white and one was black. During OCR's interview with the black student, he stated that he had received an assistantship and funding was given to him for an opportunity to teach during 1997 through fall of 1998 school year.

In addition, during OCR's review it was found that, on March 24, 1997, you received a scholarship for the 1997-98 school year. The amount was five hundred dollars. During interviews with OCR regarding the scholarship, you said that you were embarrassed by the scholarship because it was meant for undergraduate students.

(b)(7)(C)

Based on these findings, the evidence does not support your allegation that you were denied financial assistance in the form of fellowships, grants, and teaching opportunities because of your race. The evidence shows that you did not submit a written application for the positions like other students. The evidence also shows that there was another black student who received a teaching fellowship and funding.

Allegation Three

With regard to allegation three, that you were subjected to sexual harassment, i.e., "sexual advances," by a professor, OCR conducted a review of policies and procedures, and information gathered through interviews. To resolve an allegation of sexual harassment, OCR will consider whether: 1) the recipient has a policy prohibiting sex discrimination under Title IX and effective Title IX grievance procedures; 2) the recipient appropriately investigated or otherwise responded to allegations of sexual harassment; and, 3) the recipient has taken immediate and appropriate corrective action.

You alleged that you were sexually harassed by one of your professors. Specifically, you alleged that the professor started to sexually harass you in the fall of 1997 and the harassment continued until the fall of 1998. You stated that during the fall of 1997, you dropped your course with the professor but had to repeat the course during the fall of 1998. You indicated that in the spring of 1998 you also had the professor for one of your classes and the professor sexually harassed you during this time. You said that you received an "A" from the professor in the spring 1998 class.

To determine whether SHSU has a policy prohibiting sex discrimination under Title IX and effective Title IX grievance procedures, OCR reviewed the SHSU policy on sexual harassment and procedures for resolving complaints of sexual harassment. The policies and procedures indicate that sex discrimination is prohibited.

To determine whether a recipient's grievance procedures are prompt and effective, OCR will examine whether the procedures provide for: 1) notice to students and employees where complaints may be filed; 2) application of the procedure to complaints alleging harassment carried out by employees, other students, or third parties; 3) adequate, reliable, and impartial investigation of complaints; 4) designated and reasonably prompt timeframes for major stages of the complaint process; 5) notice to the parties of the outcome; and, 6) an assurance that the recipient will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate.

With regard to whether the procedures provide for notice to students and employees where complaints may be filed, the above-referenced sexual harassment policy and procedure was published in the Student Handbook, entitled *Student Guidelines*. This publication contains a general statement regarding the sexual harassment grievance procedures and directs students to the unabridged policy and procedures, which are available in the SHSU library and Student Center. Further, with regard to application of the procedures, the SHSU's procedures state that the University will review and resolve complaints of sexual harassment by any faculty, staff, student or visitor. It states that each supervisor has the responsibility to maintain a workplace free of sexual harassment. SHSU's *Procedures for Resolution of Complaints of Sexual Harassment* consisted of two parts, informal and formal complaint procedures.

Additionally, with regard to whether the grievance procedures provide for an adequate, reliable, impartial investigation, and timeframes for the completion of investigations, we found that the procedures described specific steps in a distinct timeframe that will be taken in response to sexual harassment complaints. In the instance of an informal or formal grievance, the parties are provided notice of the outcome. According to the procedures, the purpose of the grievance procedures is to resolve complaints of sexual harassment.

To determine whether the recipient appropriately investigated or otherwise responded to the allegation of sexual harassment, OCR reviewed information obtained during interviews. To make this determination, we interviewed you, and SHSU officials. The professor that was alleged to have harassed you was not available for interview by OCR.

In your interview, you indicated that beginning in the fall of 1997, the professor displayed behavior that made you feel uncomfortable, e.g., the professor would close his office door and tell you to "speak quietly so the other professors would not hear (you) talking," the professor would squeeze your shoulder affectionately, and the professor inquired about your living arrangement and marital status. Further, you stated that the professor talked about the sexual orientation of certain philosophers and said that these men were all homosexuals and freely engaged in sexual relationships with their students who were able-bodied young men like you. You further stated that the professor asked you if you would like to have a relationship with him similar to that between Socrates and Plato. You stated that you were not sure whether the professor was talking about philosophy or a homosexual relationship, or both. You also stated that another time the professor told you that you looked like Hercules or Conan and that he would like to feel your naked muscles on his (the professor's) body.

During the interview, you were asked whether you had informed the professor that his comments and physical contacts were unwelcome. You indicated that you did not. OCR also asked you if there were witnesses to the incidents or whether you informed school officials about the alleged sexual harassment. You said that you were embarrassed about the issue of sexual harassment and did not want anyone to know, but after you received a "C" you had nothing to lose. You indicated that you asked another professor if the professor was a homosexual and whether he liked woman. You asserted that you told this professor that you were being sexually harassed.

The Acting Dean of the College of Criminal Justice informed OCR that our letter to the University President was the first time she had heard about allegations of sexual harassment. The Dean indicated that there had not been any other complaints of sexual harassment filed against the professor. During OCR's interviews of SHSU officials and professors they were asked if you had informed them of your complaint or whether they had knowledge of the alleged sexual harassment. With the exception of the professor you said that you had informed of the sexual harassment, they all indicated that they had not heard of the alleged sexual harassment against you or of any other complaints of sexual harassment against the professor.

During an interview with the professor who you said you informed about the alleged sexual harassment, the professor said that she recalled a conversation with you about sexual harassment. The professor said that you indicated the alleged harasser would pat you on the back. She told you that she did not think this was sexual harassment and considered it "a friendly gesture" because this professor also patted her and others on the back. During OCR's interviews with students, they were also asked if you had mentioned anything about being sexually harassed or whether they knew about any other student complaining about sexual harassment against this professor. The students OCR interviewed indicated that they had not. As noted previously, the professor accused of sexual harassment by you was unavailable to be interviewed by OCR.

Based on the above findings, OCR determined that there is insufficient evidence to establish that sexual harassment occurred or that the SHSU knew or should have known of any harassment.

Allegation Four

With regard to allegation four, that you were racially harassed by a professor who limited your participation in class discussion and "cutting you off" in class, OCR reviewed information gathered during interviews with SHSU staff members, you and students.

(b)(7)(C)

During an interview with OCR, you stated that in the fall of 1997, you began to experience problems when you would talk and participate in class discussions, and continued through the fall of 1998. You alleged that you would get "cut off" by the professor.

You stated that the professor informed you that as a black person, you were expected to sit back and refrain from total participation. The professor explained to you that this was America and there were perceptions about the blacks and if blacks who were smart participated and argued in an intelligent manner, it would intimidate the white staff and students.

During OCR's interviews with your student witnesses, they indicated that the professor would interrupt anyone who took up too much time to make their point. It was indicated that white students, as well as you, would normally get cut off by the professor. Generally, the students' opinions were that you were very intelligent but sometimes would take a lengthy amount of time to express your opinion and the professor would not allow this. One student indicated that you and a white student would engage in a long discussion and debate and the professor would cut you both off.

Based on these findings, the evidence does not support your allegation that you were racially harassed. The evidence indicates that you, as well as, other students, black and white, were "cut off" because they were taking too much class time and not because of race.

Allegation Five

With regard to allegation five, in order to establish retaliation, it is necessary to prove that: 1) the complainant participated in a protected activity; 2) the recipient was aware of the protected activity; 3) the complainant suffered or was subjected to adverse action; and, 4) there is evidence of a causal connection between the protected activity and the adverse action. If these elements are proven, then retaliation is established unless the recipient provides a legitimate, non-pretextual reason for its action.

You specifically alleged that you were retaliated against by the SHSU because you filed grievances with the SHSU alleging racial harassment. The SHSU retaliated against you by not intervening when you raised concerns about a professor harassing you, by providing adverse information that denied you a fellowship, and by denying you an appeal of your fall 1998 grade.

OCR's review of your participation in a protected activity revealed that you had filed at least five (5) grade grievances and a discrimination complaint during the 1997 and 1998 school year. These grievances alleged racial discrimination and were filed in May, June, November, and December 1997, and February and May 1998. Based on the information provided by you and recipient it was established that you participated in a protected activity. With regard to whether the SHSU was aware of the protected activity, during

(b)(7)(C)

OCR's interviews each of the persons you alleged took adverse action against you acknowledged that they were aware of your grievances and complaints.

To determine whether you suffered or were subjected to adverse action, we analyzed each allegation of retaliation. Our determinations are provided below.

- a. University officials failed to intervene when you complained about being subjected to racial and sexual harassment.

You stated that when you complained to Assistant Dean for Graduate Studies, who was one of your fall semester professors, he did not intervene. You stated that the Assistant Dean indicated he empathized with you but could not do anything to resolve your issues. During an interview with the Assistant Dean for Graduate Studies, he indicated that you were in one of his fall semester of 1998 classes. The Assistant Dean indicated that you complained to him about being cut off and being chastised in class by the professor. The Assistant Dean stated that you also told him about what the professor said to you regarding your behavior in a "white dominated environment." However, the Assistant Dean indicated that what you described was occurring in the class was not race-related, rather, you were being "cut off" by the professor because you were talking too much. This information indicates that your allegation is true with regard to the Assistant Dean failing to intervene. The Assistant Dean did not take action on your statements. However, the only evidence of a causal connection is proximity in time. Further, the reason proffered for not taking action was found to be legitimate and non-pretexual.

- b. You were denied a Fellowship for Ethnic Minorities from the American Society of Criminology (ASC), Columbus, Ohio, because the Acting Dean of the College of Criminal Justice provided adverse information to the administrator of ASC who awarded the Fellowships.

You stated that because the Acting Dean knew the Administrator of ASC, who awarded the Fellowships, she provided negative information that led to your denial of a Fellowship. The deadline for applying for this award was March 1, 1998. You were unable to provide further information as to what the Acting Dean had provided or how you knew that the Dean had provided adverse information. During interviews with the OCR, the Acting Dean of the College of Criminal Justice indicated that she knew the name of the administrator and that contacts with the administrator were for purposes of renewing her membership. She indicated that her last contact with the administrator was about March/April 1999 when she asked for demographic information on ASC members. She indicated that she never communicated with the administrator regarding you or your concerns. The evidence is insufficient to establish that you suffered the adverse action you alleged. While you were denied the Fellowship, there is no evidence linking the denial to actions on the part of the Acting Dean.

- c. The University failed to process your appeal for a "C" you received in the fall of 1998.

During interviews with OCR, you indicated that you had filed your grade appeal regarding a "C" you received in the fall of 1998. The appeal was submitted on January 5, 1999. However, the University processed your termination appeal and not your grade appeal. You stated that you taped a meeting you had with the Acting Dean of the College and the Assistant Dean of Graduate Studies, on January 25, 1999. During this meeting, you raised the continuation of the grade appeal and no action was taken.

Based on information obtained during an interview with the Acting Dean of the College, and a review of documentation, OCR found that the Acting Dean believed you wanted to drop your grade appeal and address your termination from the program. She stated that her understanding was based on a letter, dated January 8, 1999, that indicated that the subject of the letter was termination from the program. Attached to this letter was a letter dated January 5, 1999 that you sent to the professor. The Acting Dean responded with a letter to you, dated January 13, 1999, acknowledging your January 8 letter and January 5, 1999 attachment. In the January 13, 1999 letter to you, she provided you with the 1998-99 guidelines and referred you to Academic Grievance Procedures for Students.

Additionally, the Acting Dean had a conversation with you and followed this conversation with a letter dated January 19, 1999 acknowledging your request to discontinue the grade appeal and to confirm that your letter of January 14, 1999 was an appeal of your termination from graduate studies. The Acting Dean stated that you did not write back indicating that this was not what you wanted. OCR's review of your tape of the meeting revealed that it is unclear whether you intended to pursue the grade appeal. The January 19, 1999 letter is clear that it is the understanding of the Acting Dean of the College that you wanted your grade appeal dropped.

The above information indicates that the SHSU did not take adverse action against you by failing to process your grade appeal. It was their understanding that you wanted to drop the grade appeal based on your January 14, 1999 letter, a conversation with you, and your failure to indicate that you disagreed with their conclusion in their January 19, 1999 letter. You did not raise the grade appeal again until you were in a meeting that had clearly been convened for a different matter, i.e., an appeal of your termination. Based on the information summarized above, OCR finds that the SHSU did not retaliate against you.

Page 10 -

(b)(7)(C)

Based on these findings, there is insufficient evidence to support a violation of Title IX and VI as it regards the allegations raised in this complaint. Therefore, as of the date of this letter, this complaint is closed.

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, we 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.

If you have questions regarding our determination, please contact me at (214) 880-4907.

Sincerely,



Robert Ramirez
Investigator