



DEPARTMENT OF EDUCATION

REGION VIII
FEDERAL OFFICE BUILDING
1244 SPEER BLVD., SUITE #310
DENVER, COLORADO 80204-3582

OFFICE OF THE REGIONAL DIRECTOR
OFFICE FOR CIVIL RIGHTS

July 15, 2005

Dr. Pete Likins
President
The University of Arizona
Tucson, Arizona 85721

Re: The University of Arizona
Case number 08052037-B

Dear Dr. Likins:

On January 18, 2005, the U.S. Department of Education, Denver Office for Civil Rights (OCR) received a complaint of discrimination against the University of Arizona (University). The complainant alleged that a University professor engaged in a pattern of retaliation after she, a graduate student, filed a sexual harassment claim. The complainant further alleged that the University failed to appropriately investigate and respond to her retaliation claim. This letter notifies you of our determination in the above referenced complaint.

This complaint was investigated pursuant to Title IX of the Education Amendments of 1972 (Title IX), and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in education programs and activities that receive funds from the Department. The University is a recipient of Federal financial assistance from the Department, and is, therefore, subject to the provisions of Title IX. The issues OCR investigated were whether the University retaliated against the complainant for asserting a right under Title IX in violation of 34 C.F.R. § 106.71, as it incorporates 34 C.F.R. § 100.7(e), and whether the University properly responded to her retaliation complaint, as required by 34 C.F.R. § 106.8(b).

In reaching a compliance determination regarding this allegation, we reviewed documents submitted by the University and the complainant, and conducted interviews with the complainant and University faculty and staff. Using established legal standards and investigative approaches, OCR determined that the evidence does not establish a compliance concern. The factual and legal basis for our conclusion is set forth below.

The complainant alleged that a University professor engaged in a pattern of retaliation after she filed a sexual harassment claim against him. The regulations enforced by our office provide that a recipient shall not intimidate, threaten, coerce, or discriminate

against any individual for the purpose of interfering with any right or privilege secured by the regulations, or because that individual has made a complaint, testified, assisted, or participated in any manner in an investigation under the regulations. In investigating retaliation allegations, we determine whether: the complainant engaged in a protected activity of which the recipient was aware; the recipient subjected the complainant to an adverse action; and there is a causal connection between the protected activity and the adverse action. If these elements are established, then we consider whether the recipient has a legitimate and non-discriminatory reason for its action and whether such reason is a pretext for retaliation.

The complainant, who was a Ph.D. candidate in the Department of Astronomy, contacted the University's Equal Opportunity and Affirmative Action Office (EOAAO) on August 30, 2002, regarding a series of events with her graduate advisor in the Astronomy Department (graduate advisor), which she alleged was sexual harassment. On September 4, 2002, the complainant met with an attorney in the EOAAO office. On September 13, 2002, the EOAAO office contacted the complainant's graduate department regarding her concerns. The Department confirmed that around October 2, 2002, the head of the Astronomy Department contacted the graduate advisor about the complainant's allegations. Therefore, we found that the complainant engaged in a protected activity of which the University was aware.

In determining if the recipient took an adverse action contemporaneous with or subsequent to the protected activity, we look at whether the action significantly disadvantaged the complainant as to her status as a student or her ability to gain benefits of the program. In the alternative, even if the challenged action does not meet this standard, it could be considered retaliatory if it reasonably acted as a deterrent to further protected activity. Thus, we consider whether the alleged adverse action caused lasting and tangible harm, or had a deterrent effect. Merely unpleasant or transient incidents usually are not considered adverse.

The complainant alleged various acts of retaliation. First, she alleged that the University did not contact her for comment before a statement appeared on the Gemini astronomy webpage about a discovery she wrote about in a first author paper. OCR obtained copies of e-mail regarding Gemini's request for information regarding the project. Gemini's Public Information and Outreach Manager (Manager) indicated that he contacted the complainant but did not hear back from her. As a result, he contacted the graduate advisor who was in charge of the project. Subsequently, the complainant contacted the Manager who confirmed that he had sent an e-mail asking various people involved in the project to review the proposed article and that she had inadvertently been left off the e-mail. The Manager also states in his e-mail, "that if there are any changes that you would like to make, let me know and we will make them immediately."

Though the complainant was not contacted immediately, she was contacted and permitted to submit any proposed changes. Additionally, the Gemini webpage is independent of the University, so we could not establish that the delay in contacting the complainant was

due to University action. Therefore, we could not determine that she suffered an adverse action by the University.

Second, the complainant alleged that the graduate advisor at the University retaliated against her when he did not give her credit in Web sites for instruments and plots that she developed. The complainant states that on her graduate advisor's "SDI Camera Page" and "Adaptive Optics at the MMT and First Science Results" Web sites she is not given credit for her contributions to the development of an optical element and the plot that she created and he posted on the Web site. The graduate advisor acknowledged that the complainant prepared the plot. He stated that the complainant contributed to one piece of the project. Furthermore, he stated that this Web site is related to the VLT not the MLT project. He stated and the complainant confirmed that she did not participate in the VLT project. The Deputy Head of the Astronomy Department stated that giving credit in a Web site is a "gray area." Astronomy department staff acknowledged that graduate students are not always fully credited for their work. Another professor in the Department stated that there is no conventional way to credit people in a Web site and that these type of omissions are not rare.

Based on this information, OCR could not establish an obligation on the part of the University, in this instance, to ensure that the complainant received credit on the Web sites for work in which she participated. Additionally, OCR could not establish that the failure to give credit significantly disadvantaged the complainant as to her status as a student or her ability to gain the benefits of the program, or served as a deterrent to future complaints. Accordingly, OCR could not establish that the complainant suffered an adverse action.

Third, the complainant alleged that her graduate advisor failed to credit her work in a paper that he wrote. The graduate advisor stated and colleagues confirmed that this was a non-refereed paper. He indicated that in a non-refereed paper there is no obligation to cite and that such articles are a "gray area" and "second class literature." He explained that the first author paper that could have been cited in this instance was also a non-refereed paper. Furthermore, "there are errors in the non-refereed paper because it was further developed as they went on." The Deputy Head of the Astronomy Department stated, "that it is polite and courteous to refer to those who develop instruments." The Department Head of Astronomy stated that the graduate advisor had developed the concept before the complainant became a student at the University. He acknowledged that the complainant did a lot of work on the project and put together the instrument. The University does not have a written policy regarding graduate students receiving credit for research work. The Head and Deputy Head of the Astronomy Department stated that they could not remember any graduate student claim of not receiving credit for work. Department staff also acknowledged that graduate students often do not get full credit for their work, but do not raise it as an issue. The head of the Department stated, "students on average get more credit than maybe a strict evaluation would warrant." Reviewing documentation presented by the University, OCR found that the complainant was often credited for her work in various papers and publications.

Based on this information, OCR could not establish that the complainant in this instance should have received credit in the paper for the work she performed. We found that the graduate advisor at other times did give credit to the complainant, and there was no ongoing patterning of not giving her credit. Additionally, OCR could not establish that the failure to give credit significantly disadvantaged the complainant as to her status as a student or her ability to gain benefits of the program, or served as a deterrent to future complaints. Thus, OCR could not establish that the complainant suffered an adverse action in this instance.

Accordingly, our analysis of this issue ends at this point because we could not establish that the complainant suffered an adverse action. OCR, therefore, concludes that there is insufficient evidence to establish a violation of Title IX as it related to the claims of retaliation.

The complainant also alleged that the University failed to appropriately investigate and respond to her claim of retaliation. Under 34 C.F.R. § 106.8(b), the University is required to adopt and publish a grievance procedure providing for the prompt and equitable resolution of student and employee complaints alleging issues regarding Title IX or its implementing regulation, including retaliation.

OCR reviewed the University's policies and procedures and found that they meet the requirements of Title IX. Specifically, OCR found that the University has appropriately designated staff to handle Title IX complaints and that the grievance procedures provide the opportunity for a prompt and equitable resolution of complaints. OCR finds the University's grievance procedures meet generally accepted standards of legal sufficiency and theory.

OCR next sought to determine if the University followed its own grievance procedures. The University's policies and procedures for investigating claims of sexual harassment and retaliation located on the Internet and in the EOAAO office are as follows.

A complaint may be filed with the EOAAO office and should include the name of the person claiming discrimination, the name of the respondent, a clear and concise written statement of the facts that constitute the alleged discriminatory act(s), include pertinent dates and sufficient information to identify any other individuals who may provide information during the course of an investigation conducted under these procedures, a statement by the complainant verifying that the information provided is true, and the complainant's signature.

At the time that the complaint is filed a representative from the EOAAO office shall conduct an interview with the complainant.

If the complaint meets the requirements set forth, a staff member from the EOAAO office shall sign the complaint and provide a copy to the complainant.

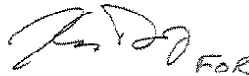
On August 9, 2004, the complainant went to the EOAAO to talk to a representative. She informed the EOAAO of the various acts of retaliation she experienced. The EOAAO confirmed that the complainant came to the office and discussed issues related to her claims of retaliation. OCR's investigation found that the University did not investigate the complainant's allegation of retaliation because she did not initiate the complaint process. The complainant acknowledged that she did not file a complaint with the EOAAO office. We found the complainant contacted the EOAAO office regarding her allegations and concerns but chose not to file a complaint. We found that the University followed its policies and procedures relating to the filing and investigation of complaints. The University only has a formal complaint resolution process; there is no requirement that a University have an informal complaint resolution process. OCR, therefore, concludes that the University is in compliance with the regulation implementing Title IX as it related to the complainant's allegation that the University failed to appropriately investigate and respond to her claim of retaliation. Additionally, because OCR could not establish that the complainant was subjected to retaliation, OCR cannot establish that the University was obligated to further investigate any retaliation allegations.

OCR is closing this case as of the date of this letter. This letter addresses only the issues discussed above and should not be interpreted as a determination of the University's compliance or noncompliance with any other law or regulation, in any other regard.

Under the Freedom of Information Act, it may be necessary to release this document and related records upon request. If we receive such a request we will seek to protect personal information to the extent provided by law.

If you have any questions, you may contact Ms. Heather Tierney, the attorney assigned to this case, at (303) 844-4564, or me at (303) 844-4821.

Sincerely,

A handwritten signature in black ink, appearing to read 'N. Huggins', with the letters 'FOR' written in a smaller font to the right of the signature.

Nicole A. Huggins
Deputy Chief Regional Attorney
Office for Civil Rights
Denver Enforcement Office

cc: Lynne O. Wood, University Attorney