



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
REGION I
JOHN W. McCORMACK POST OFFICE AND COURTHOUSE, ROOM 701
POST OFFICE SQUARE
BOSTON, MASSACHUSETTS 02109-4557

October 9, 2002

Lawrence S. Bacow
President
Tufts University
Ballou Hall
Medford, MA 02155

Re: Complaint No. 01-02-2031

Dear President Bacow:

This letter is to notify you that based on the information gathered during the course the investigation, OCR has concluded that there is insufficient evidence to establish that Tufts University ("University") discriminated against the Complainant on the basis on the basis of sex, as alleged in the above-referenced complaint. The bases for this determination are set forth below.

On April 12, 2002, the Office for Civil Rights (OCR) received this complaint against the University alleging discrimination on the basis of gender. More specifically, the Complainant alleged that the University discriminated against her by failing to properly respond to her sexual harassment complaint against the Primary Source, a campus newspaper. She further alleged that the University failed to properly warn the newspaper to refrain from retaliating against her once she had filed the sexual harassment complaint against the newspaper.

OCR considered the complaint under the jurisdiction of Title IX of the Education Amendments of 1972, 20 U.S.C. Section 1681 et. seq. and its implementing regulation found at 34 C.F.R. Part 106 (Title IX). Title IX prohibits discrimination on the basis of gender, including sexual harassment, in educational programs and activities that receive Federal financial assistance from the United States Department of Education. Since the University receives such assistance, it is subject to the anti-discrimination provisions of Title IX.

To ensure the elimination of gender-based discrimination in Federally assisted programs, the Title IX regulations require recipient schools to develop policies and procedures for dealing with complaints of sexual harassment. A school's procedures and implementation thereof must lead to a prompt and equitable resolution of a sexual harassment complaint and must prevent

additional harassment from occurring. The Title IX regulations at 34 C.F.R. 106.8(b) and 106.71 also incorporate by reference the retaliation provisions of Title VI at 34 C.F.R. 100.7(e), which prohibit retaliation against an individual who files a complaint of harassment. Thus, under Title IX, a school must protect a complaining student from retaliation once a complaint of sexual harassment has been filed.

When analyzing a complaint that a school failed to properly respond to a complaint of sexual harassment, 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 harassment.

Consistent with OCR's case processing manual, we informed the University of the allegations and requested information demonstrating its response to the complaint. OCR Attorney Anthony Cruthird also met with University officials on May 20, 2002, to explain the allegations and to provide the University with an initial opportunity to respond to the complaint.

Sexual Harassment Allegation

By letter dated July 12, 2002, the University provided additional information relevant to the complaint. The information provided by the University reveals that on October 12, 2001, the Complainant filed a grievance under the University's student discipline procedure alleging that the student newspaper had sexually harassed her by publishing a cartoon caricature of a Student Labor Action Movement ("SLAM") member with large breasts. The Complainant alleged that this caricature was actually a depiction of her in a SLAM t-shirt and that it improperly depicted her "gendered" body.

In response to the filing of the grievance, the Primary Source submitted its response to the allegations on October 19, 2001. This response was submitted to Dean Veronica Carter pursuant to the student discipline procedure. The University then scheduled a hearing before the Committee on Student Life (CSL) for November 5, 2001. The hearing was held on November 5, 2001. The Complainant was provided with an advocate, Professor Lee Edelman, and argued that the references to SLAM and the large-breasted caricature constituted sexual harassment. The newspaper editor-in-chief was also present to respond to the charges, and presented the view that the content of the article was protected free speech, irrespective of the identity of the caricature.

After the CSL hearing, the members of the committee met and considered the evidence from both parties. The committee voted to dismiss the sexual harassment charges against the Primary Source by a vote of (8-0). By letter dated November 6, 2001 (one day after the conclusion of the student discipline hearing), Ms. Peggy Cebe, the Faculty Chair of the CSL, notified the

Complainant that the committee “voted unanimously to dismiss the charges against the Primary Source.”

Based on this information, OCR concludes that the University promptly responded to the complaint of sexual harassment. Within a day of filing, the University requested a response from the Primary Source. Their response was filed a week after the grievance had been filed and then a hearing was scheduled before the CSL 16 days later. The committee issued its decision one day after the scheduled hearing on November 6, 2001. In all, the process from the time of the complaint (October 12, 2001) to the resolution of it (November 6, 2001) was less than 30 days. OCR finds that this constitutes a prompt response to the initial sexual harassment allegations.

With respect to the claim that the University’s response was improper because it failed to even mention the charges of “sexual harassment” or “sexism” in its decision letter, OCR concludes that the letter is sufficient notice of the committee’s decision. Since the Complainant’s grievance clearly stated that the Complainant was charging the newspaper with sexual harassment, a letter stating that her “charges” were dismissed plainly relates back to the substance of the complaint (i.e. “sexual harassment charges”). OCR has determined that this allegation does not warrant any further consideration.

OCR has also determined that the University responded to the complaint in an equitable fashion. When the Complainant filed the complaint against the Primary Source, she was provided with an opportunity for a hearing before the CSL. The Complainant was also provided with an advocate who helped her during the presentation of her case. After the hearing, the Complainant received the committee’s decision and was advised of her right to appeal. OCR has found that these types of procedural components are adequate in providing for the equitable resolution of complaints of sexual harassment under Title IX, and that the University afforded the Complainant all of those components during the investigation of the complaint. Therefore, the evidence does not support a Title IX violation.

Retaliation Allegations

The Complainant’s second allegation concerns another article published by the Primary Source after the initial sexual harassment grievance. The Complainant alleged that the Primary Source retaliated against her for filing the grievance by publishing an anonymous letter from a fellow student. In the December 6, 2002 edition of the Primary Source, the newspaper published a letter from a fellow student who made a claim that the Complainant had “physically harassed” her at a fundraising event a year earlier. The letter also stated that the Complainant had “groped” this student and that the student “felt violated” by the Complainant’s actions.

Believing that the newspaper was retaliating against her, the Complainant immediately complained to Dean Bruce Reitman, the Dean of Students. According to documents from the University, Dean Reitman informed the Complainant that he would conduct an immediate investigation. The Dean contacted the student newspaper and demanded to know the name of the author of anonymous letter. This student came to Dean Reitman’s office on December 7, 2002 to meet with him and to discuss the validity of her letter. According to University documents, the Dean then scheduled a number of meetings with the Complainant and with this

student to discuss the letter and the circumstances surrounding it. Although the matter was never resolved between the two parties, the Dean's actions were responsive to the complaint. The day after the Complainant brought the matter to his attention, he contacted the student newspaper and found out the name of the anonymous writer. He then held a series of meetings with the Complainant to discuss the situation and to attempt to reach a resolution. OCR finds the Dean's actions to constitute a prompt response to the complaint of retaliation.

While these meetings were underway, yet another article was published in the Primary Source. On January 31, 2002, the newspaper again referred to the anonymous letter from the fellow student and referred to the student as "the Tufts woman who wrote that she was molested by Iris Halpern...[.]" On April 1, 2002, the Complainant filed another complaint against the Primary Source pursuant to the University's student disciplinary procedures. The complaint alleged that both articles (the December 6 and January 31) libeled the Complainant and constituted retaliation against her because she had filed your initial sexual harassment complaint against the Primary Source.

The evidence submitted by the University demonstrated that on April 29, 2002, a second hearing was held before the CSL to consider the complaint allegations against the Primary Source. This hearing was prompt in that it began less than a month after the Complainant filed this second complaint. At the hearing, you were provided with two advocates to help the Complainant present her case. Once the hearing had concluded, the committee issued a decision that was not in her favor on either the libel charges or the retaliation charges in both the December 6 and January 31 articles, but which found that the Primary Source was irresponsible in the use of the term "molested" in the January 31, 2002 article. The Complainant was again advised that she had the right to appeal the committee's decision.

Upon reviewing the University's response to our data request, Mr. Cruthird, from our office, contacted the Complainant to discuss the information provided by the University. During this conversation, Mr. Cruthird informed the Complainant that based on the information provided by the University, there is insufficient evidence to establish a violation of Title IX. Mr. Cruthird furthered informed the Complainant, however, that OCR intended to discuss with the University the process by which it informs individuals of the prohibition against retaliation. In particular, he informed the Complainant that although OCR has concluded that there is insufficient evidence to establish that the University violated Title IX in responding to her claims of retaliation, OCR believes it would have been prudent for the University to remind the Primary Source in between the December 6, 2001 and January 31, 2002 articles that students are entitled to file complaints under Title IX and that retaliation against any such student is prohibited.

During the conversation with Mr. Cruthird, the Complainant reiterated her concern with respect to the equitable nature of the process. In particular, the Complainant stated that the University did not provide her with sufficient assistance and that she felt that the burden of establishing that her rights were violated unfairly rested with her. In light of the Complainant's concerns, OCR met with the University officials on October 2, 2002. At the meeting, OCR discussed with University officials the Complainant's concerns regarding the process, as well as OCR's concern with respect to notice against retaliation. Since OCR is currently working with the University on

its sexual harassment policies and procedures in an ongoing monitoring activity, OCR intends to provide technical assistance regarding these matters in the context of that compliance activity.

Overall, based on the information provided, OCR concludes that there is insufficient evidence to establish that the University violated Title IX. Thank you and your staff for your cooperation during investigation of this matter. If you have any questions, please feel free to call me at (617) 223-9683, or Mr. Cruthird at (617) 223-9705.

Sincerely,



Carolyn F. Lazaris
Program/Administrative Manager

cc: (b)(7)(C)

