



TIMOTHY C. J. BLANCHARD
DIRECTOR
NEW YORK OFFICE

July 31, 2009

President Stuart Rabinowitz
Hofstra University
144 Hofstra University
Hempstead, New York 11549-1440

Re: Case No. 02-09-2051
Hofstra University

Dear President Rabinowitz:

This letter is to notify you of the determination made by the U.S. Department of Education, New York Office for Civil Rights (OCR) regarding the above-referenced complaint you filed against Hofstra University (the University). The complainant alleged that the University failed to respond appropriately to complaints that her daughter (the Student) was subjected to sexual harassment when her peers posted sexually explicit comments about the Student on a social networking website.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), as amended, 20 U.S.C. § 1681 *et seq.*, and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in programs and activities receiving financial assistance from the U.S. Department of Education (the Department). The University is a recipient of financial assistance from the Department. Therefore, OCR has jurisdictional authority to investigate this complaint under Title IX.

During the course of its investigation, OCR reviewed documentation the complainant and the University provided. OCR also interviewed the complainant and University staff members. A summary of OCR's legal and factual determinations is set forth below.

The complainant alleged that in January 2009, the Student and complainant discovered that unidentified individuals, whom they believed to be University students, had posted sexually explicit remarks about the Student on a social networking website.¹ The complainant alleged that the University did not appropriately address the complaint she filed with the University on behalf of the Student, in which she alleged that the postings constituted sexual harassment.

¹ The website contained a portal specifically designated for University students.

Title IX and its implementing regulation prohibit discrimination based on sex, including sexual harassment. Sexual harassment is unwelcome conduct of a sexual nature and can include sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct. Hostile environment sexual harassment is sexually harassing conduct that is sufficiently severe, persistent or pervasive to limit a student's ability to participate in or receive benefits, services or opportunities in the recipient's program. If OCR establishes that conduct of a sexual nature occurred, OCR will examine additional factors to determine whether a sexually hostile environment exists. If OCR determines that a sexually hostile environment exists, OCR will then determine whether the recipient had actual or constructive notice of the hostile environment and whether the recipient took immediate and effective corrective action reasonably calculated to stop the harassment, prevent its recurrence and, as appropriate, remedy its effects.

The Student was enrolled at the University during academic year 2008-2009. OCR determined that the complainant called the office of the University's ^{Nonresponsive} on January 9, and 27, 2009, and spoke with an administrative assistant and the Assistant Dean ^{Nonresponsive} (the Assistant Dean). OCR determined that during the conversations, the complainant expressed concern about salacious information posted on the social networking website, and requested that the University remove the content and shut down the website. In response, the administrative assistant and the Assistant Dean advised the complainant that the University could not restrict access to the site or regulate its content because it was controlled by off-campus entities. They also advised the complainant to contact the webmaster of the site to have the objectionable content removed. In addition, OCR determined that the administrative assistant advised the complainant that she could contact the Office of Public Safety to file a public safety incident report, and advised the complainant that counseling for a University student was available.² OCR determined that neither the complainant nor the Student subsequently filed a report with the Department of Public Safety, or filed a harassment complaint pursuant to the University's published policies and procedures.³

The complainant advised OCR that she identified herself and the Student by name during both conversations; however, both the administrative assistant and the Assistant Dean denied this. Moreover, the University asserted that the complainant did not identify as University students the persons responsible for posting the comments. The complainant did not provide and OCR did not find evidence to establish that she disclosed her or the Student's identity during these conversations, or that she ever asserted that University students were responsible for the postings.

Based on the above, OCR determined that the complainant requested that the University block access to the website and/or remove the objectionable content, but did not provide sufficient information to permit the University to investigate the alleged harassment of the Student; i.e., the University was unaware of the identity of the Student. Absent information regarding the

² Although the complainant disputed that the University advised her that she could file a complaint with the Office of Public Safety, her contemporaneous notes from the conversation on January 9, 2009, reflect that the administrative assistant "referred her to Public Safety." Her contemporaneous notes from the conversation on January 27, 2009, indicate that she called Public Safety that day, but was unable to reach anyone.

³ The University's Code of Community Standards sets forth the procedures for filing a harassment complaint against another student, while the University's Harassment Policy contains the procedures for filing a harassment complaint against an individual, but is not limited to complaints against students.

identities of the victim and alleged harasser(s), or the other relevant details, OCR concluded that the University had insufficient information to investigate or otherwise respond to the complainant's concerns.⁴ Therefore, OCR determined that there was insufficient evidence to conclude that the University failed to respond appropriately to the complainant's complaints of sexual harassment. Accordingly, OCR will take no further action regarding this allegation and has closed the above-referenced complaint as of the date of this letter.

This concludes OCR's consideration of this complaint. This letter is not intended, nor should it be construed, to cover any issues regarding the University's compliance with Title IX that may exist, but are not discussed herein. This letter is intended to address this individual OCR case. Letters of findings contain fact-specific investigative findings and dispositions of individual cases. Letters of findings are not formal statements of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

It is unlawful to harass or intimidate any individual who has filed a complaint or participated in actions to secure protected rights.

Under the Freedom of Information Act, 5 U.S.C. § 552, it may be necessary to release this letter 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, that if released, could constitute an unwarranted invasion of personal privacy.

If you have any questions regarding OCR's determination in this case, please contact Janet Pfeffer, Senior Equal Opportunity Specialist, at (646) 428-3833 or Janet.Pfeffer@ed.gov; John Collins, Compliance Team Attorney, at (646) 428-3810 or John.Collins@ed.gov; or me, at (646) 428-3806 or Felice.Bowen@ed.gov.

Very truly yours,

A handwritten signature in black ink, appearing to read "Felice Bowen for".

Félice Bowen
Compliance Team Leader

⁴ OCR determined that subsequent to January 27, 2009, the complainant learned that 2 of the 4 students responsible for the postings were University students. However, there is no evidence to indicate that she so advised the University.