



OFFICE FOR CIVIL RIGHTS

U.S. DEPARTMENT OF EDUCATION
THE WANAMAKER BUILDING, SUITE 515
100 PENN SQUARE EAST
PHILADELPHIA, PENNSYLVANIA 19107

WENDELLA P. FOX
DIRECTOR
PHILADELPHIA OFFICE
EASTERN DIVISION

May 29, 2003

In response, please refer to: 03022004

Dr. Earl S. Richardson
President
Morgan State University
1700 E. Cold Spring Lane
Baltimore, MD 21251

Dear Dr. Richardson:

This letter is to notify you of our determination on the complaint filed with the U.S. Department of Education (the Department), Office for Civil Rights (OCR) against Morgan State University (University). The complainant alleged that the University discriminated against him on the bases of age and sex. The complainant alleged that, because of his age and sex, a professor has acted in a number of ways to keep him from completing a doctoral program in History. For the purposes of our review, we have grouped the allegations into the following categories: inaccurate or false academic advisement; slanderous statements about him; and discriminatory preparation for and administration of the comprehensive examinations and discriminatory dismissal from the doctoral program. The complainant also alleged that the University discriminated against him when he was not allowed to pursue a grievance.

OCR has authority to address the allegations under Title IX of the Education Amendments of 1972 (Title IX) and the Age Discrimination Act of 1975 (the Age Act), which prohibit discrimination on the bases of sex and age, respectively, in programs and activities of recipients of federal financial assistance from the Department. The Department's regulations implementing Title IX and the Age Act are 34 C.F.R. Parts 106 and Part 110, respectively. The University is a recipient of federal financial assistance from the Department and is, therefore, subject to those regulations.

The complaint was not resolved through mediation by the Federal Mediation and Conciliation Services (FMCS). Since 60 days passed with no resolution, OCR resumed our investigation of the complaint. OCR has determined that the University did not discriminate against the complainant on the bases of sex or age with respect to the grading of his March 15, 2001 comprehensive examination, with respect to dismissing him from the doctoral program, or with respect to accepting his grievance. Further, OCR is closing its files with respect to the other allegations in the complaint because they were filed untimely. The reasons for our determinations are outlined below.

In reaching its determinations on this complaint, OCR reviewed documentation from the University and the complainant and interviewed relevant University personnel, the complainant, and witnesses suggested by the complainant.

Findings of Fact

As a result of our investigation, OCR has made the following findings of fact:

In the fall 1996, the complainant enrolled in the University's Ph.D. program in History. At the time of enrollment, he was sixty years old.

From the start of the University's Ph.D. program in History in 1995, at least six students, including the complainant were fifty years old or older. Of those six students, one male was over 70 years old when he started the program.

In August 2000, the University changed its minimum passing grade from a B+ to an A on the comprehensive examinations in the Ph.D. program.

In November 2000, the complainant took Part I (major concentration) and Part II (minor concentration) of the comprehensive examination.

On November 30, 2000, the University informed the complainant that he failed Part I of the comprehensive examination but passed Part II; the University informed him that he would be permitted to retake Part I of the examination in spring 2001 in accordance with University rules. The complainant did not file a grade appeal or complaint about failing Part I of the examination.

The University's fall 1997 *Guidelines for Students in History, Ph.D. Program* states that students will have two opportunities to pass both the major and minor parts of the comprehensive examination within two consecutive semesters. Failure to do so will result in dismissal from the program.

The University's 2000 edition of the *Graduate Programs in History* states that if any student fails any questions from the major or minor parts of the examination, the student would have one more chance to pass the exam.

In or around December 2000, the University professor in question advised the complainant to read additional literature in preparation for his spring 2001 retake of the examination.

On March 15, 2001, the complainant retook Part I of the comprehensive examination.

On April 12, 2001, the complainant's attorney sent a letter to the University president requesting a review and fact-finding hearing regarding the complainant's comprehensive examination because the complainant had been told that he did not do well on the exam.

On April 24, 2001, the University advised the complainant that he failed Part I for a second time.

On April 30, 2001, the University advised the complainant that he would be dismissed from the School of Graduate Studies effective May 23, 2001, as a result of his failure to pass his comprehensive examination in March 2001.

The University's 2000-2003 *Graduate Catalog*, states: "Students who... fail to make satisfactory academic progress will be dismissed from the School of Graduate Studies. Unsatisfactory academic progress includes... failing comprehensive or preliminary examinations."

Between May 2, 2001 and July 16, 2001, there were numerous written communications between the University and the complainant and/or the complainant's attorney regarding the complainant's comprehensive grade, his dismissal and his appeal rights.

On October 9, 2001, OCR received the instant complaint, which was dated September 30, 2001.

Analysis

The regulation implementing Title IX, at 34 C.F.R. Section 106.31, prohibits the exclusion from participation, denial of benefits, or other different treatment on the basis of sex. The regulation implementing the Age Act, at 34 C.F.R. Section 110 (a) and (b), prohibits the exclusion from participation, denial of benefits, or other different treatment on the basis of age. In reaching a determination on this complaint, OCR had to determine which alleged discriminatory actions are timely raised. With regard to any action that we considered timely, OCR then had to determine if there was any factual evidence that would suggest that age or sex was a motivating factor for the action.

Timeliness of allegations

The alleged discriminatory acts cover a period from 1996 through 2001, the period from the complainant's enrollment in to his dismissal from the program. The allegations regarding the grading of his March 14, 2001 comprehensive exams and his dismissal from the program are timely. The other allegations are not appropriate for complaint resolution because they are untimely, as discussed below.

OCR, generally, will not investigate a complaint of discrimination that is more than 180 days old. One exception to the 180-day timeframe is when the act complained of is part of a systemic pattern and practice of discrimination and there is an alleged occurrence of an action that is part of the pattern and practice within the 180 days preceding the filing of the complaint. OCR may also waive the 180-day timeframe when the complainant could not reasonably be expected to know an act was discriminatory within the 180-day period, but files the complaint within 60 days after becoming aware of the alleged discrimination.

The complaint was dated September 30, 2001. OCR determined that it would use April 3, 2001 as the 180th day for purposes of determining timeliness of the allegations. The complainant indicated that he did not file a complaint about the alleged slanderous remarks or inadequate advisement before September 30, 2001, because he was not aware that there was a connection between the comments or treatment and his age or sex. Most of the statements of which the complainant complained were allegedly made in 1996-97, outside OCR's 180-day timeframe. The complainant claimed that it was only after he was dismissed from the program, when other students informed him of the comments that the University professor in question made about older and/or male students, that the complainant linked the treatment to his age and sex. The complainant's allegations of age and sex discrimination in a June 20, 2001 letter to the University's Interim Dean establish that he was aware of such statements by that date, i.e., more than 60 days before he filed his OCR complaint.

The complainant also indicated that he did not file a grade appeal or complaint within the 180-day timeframe about failing the first time because he had been advised by some to not appeal the grade but to just retake the exam.

The complainant also asserts that all of the acts complained of constitute a pattern and practice, on the part of a particular University professor, to prevent him from getting the doctoral degree. OCR has determined that all of the acts complained of are not part of one pattern and/or practice of behavior directed at the complainant because of his age and sex to prevent him from obtaining the doctoral degree from the University. Rather, OCR finds that the allegations regarding the preparation for and administration of the comprehensive examinations, as well as the complainant's dismissal from the program, adequately raise an issue of systemic discrimination, with the first event in this pattern and practice being the preparation for and administration of the first comprehensive examination in November 2000. The other allegations do not raise an issue of systemic or continuous discrimination and the reasons offered for their untimely filing do not warrant waiver of OCR's timelines.

The allegations regarding any event that occurred prior to the complainant taking the first comprehensive examination, i.e., November 2000, are untimely filed and are not appropriate for OCR's complaint resolution process. Nonetheless, OCR reviewed the complainant's history in the program, his interactions with the University professor in question, and the history of others in the program to further its analysis of the issues and areas of concern.

Academic advisement

The complainant alleged that the University professor in question advised him differently than she advised female and younger students in the program. The inaccurate or false academic advice was the professor's telling the complainant that he needed certain additional courses to meet the requirements of the doctoral program; this occurred in or around 1999. We do not find the advisement in 1999 to be part of a pattern and practice of behavior that included the advice given in 2000 and 2001. OCR determined that this allegation, regarding the advice given in 1999, is untimely. The complainant also complained about advice given to him by the University professor in question, in 2000 and 2001, regarding preparation for the comprehensive examinations. OCR considers the advice given in 2000 and 2001 to be encompassed in the alleged pattern and practice of discrimination regarding preparation for the comprehensive exam, which is discussed below.

Statements made about the complainant

The complainant alleged that the University professor in question made slanderous statements about his character, personal life, academic skills, and accomplishments to discredit him because he was an older male student. OCR has determined that there is insufficient evidence that any of statements were made within the 180 days preceding the filing of the complaint or that the statements were made to impact the complainant's academic efforts and progress. According to the complainant and his witnesses, most of the statements about his character, accomplishments, and personal life were made in 1996-97, when he first entered the program. As most of the statements of which he complained were made in the early years of his enrollment in the program and his complaint was filed more than 60 days after he was informed of the statements, they do not warrant a waiver of OCR's timeframes.

In addition, our investigation established that the statements in question were separate instances of opinion statements or were in the nature of social conversation or gossip, and were not part of an attempt to remove the complainant from the program. Finally, statements from witnesses who are most favorable to the complainant indicated that the University professor made comments of a similar nature about others, including female students and younger students.

Preparation for and administration of the comprehensive examinations and dismissal from the program

OCR has determined that there is no act of alleged discrimination on the bases of age or sex that is within the allowable timeframe to warrant seeking resolution of the other acts in this group of activities, that are alleged to be part of the pattern and practice but are outside the specified timeframe.

The complainant alleged that the University professor in question wrongfully discriminated against him by engaging in a series of acts to prevent him from completing the doctoral program. These alleged discriminatory actions included actions such as not advising him the same as she advised female students in preparation for the comprehensive exams, changing the grade required for passing the comprehensive exam, and failing the complainant on the two comprehensive examinations he took. These actions covered a period from sometime in November 2000 when he took the first comprehensive examination, to at least April 24, 2001, when the University notified him that he had failed the March 15, 2001 retake of the comprehensive exam.

As discussed earlier, we consider that the University professor's actions regarding preparation and evaluation of the complainant for the comprehensive examinations and administration of the comprehensive examinations may reasonably be construed as a pattern and practice of behavior. OCR sought to determine if there was a timely act, within this group of actions, that was motivated by consideration of the complainant's age or sex, and which would then justify making a determination about the acts that fall outside the allowable timeframe. The complainant's dismissal from the program is timely, and we treat the event of failing him on the March 2001 exam as timely because the University notified him of that failure by letter dated April 24, 2001.

The evidence is insufficient to support a finding that the grading of the second comprehensive exam was discriminatory. OCR is not in a position to determine what is an appropriate grade for the complainant's answer to the Historiography question. Our review of the evidence concerning his failing answer, however, does suggest that the University professor in question had a legitimate nondiscriminatory reason for giving him a failing grade on the March 2001 exam. The complainant has indicated in his complaint that he did not have time to completely answer the question and so provided a summary of relevant readings that he had undertaken at the suggestion of the University professor. Further, at the request of the University professor in question, three other University professors read the complainant's response. Two of those three University professors indicated that he failed the examination. The University professor who indicated a passing grade for him on that mandatory question stated that her grade was her statement about the process and not about the content of the complainant's answer; she did not think the answer itself deserved a passing grade.

OCR also finds that the University had a legitimate, nondiscriminatory reason for dismissing the complainant from the program in spring 2001. The University's articulated reason for dismissing him is that he failed his comprehensive exams twice. The University has a written policy of dismissing a Ph.D. student who twice fails his/her comprehensive exams; that policy is age-and gender-neutral. The evidence was insufficient to establish that the reason was pretextual. No one else in the program had been allowed to take a comprehensive examination more than twice and no one else had been allowed to remain in the program after failing a comprehensive examination twice. Further, there was no evidence to suggest that the reason for dismissing the complainant was pretextual.

For the foregoing reasons, the evidence is insufficient to establish that the University discriminated against the complainant on the bases of his age and/or sex when he received a failing grade on the March 15, 2001 retake comprehensive exam or when the University dismissed him from the Ph.D. program in History.

Refusal to accept grievance

OCR finds that the facts do not support the complainant's allegation that the University refused to accept his grievance. He acknowledged in an interview that the University did not deny him the right to file a grade appeal "but told him [the appeal had to be lodged with] the people who acted against him." He also objected to the University's denying him the right to have his attorney present during the appeal process. It is not a violation of the regulations OCR enforces to have a procedure that required the complainant to first present his grievance to the head of the department even if that person was being implicated in the actions grieved, nor is it a violation to not allow the presence of an attorney to represent a student during an internal appeal process. He acknowledged that the University did not deny him the right to file a complaint of discrimination on the basis of age or sex or any other protected class over which OCR has jurisdiction, and he did not know of any fact that would suggest that the University would not process his complaint. The complainant said that he did not continue to pursue his complaints with the University because he felt that he was wasting his time.

Conclusion

In summary, OCR has determined that the University is not in violation of the Title IX and the Age Act regulations with respect to him receiving a failing grade on the March 2001 comprehensive exam, nor with respect to his dismissal from the program. OCR is ending its investigation of the other allegations because they are untimely. Therefore, OCR is closing its files regarding this complaint effective the date of this letter.

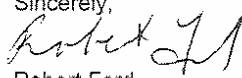
Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect, to the extent provided by law, personal information that, if released, could constitute an unwarranted invasion of privacy.

Federal regulations prohibit recipients of Federal financial assistance from taking actions which intimidate, threaten, coerce or discriminate against individuals who exercise their statutory rights, or because they filed a complaint or are taking part in the complaint resolution process.

Page 7 - Dr. Earl S. Richardson

If you have any questions or if we can provide further assistance, please feel free to contact Ms. Beth O'Mara, Equal Opportunity Specialist at (215) 656-6939 or me at (215) 656-8537.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Ford". The signature is written in a cursive style with a large, stylized "F" at the end.

Robert Ford
Team Leader

Cc: Julie Goodwin, Esquire