



UNITED STATES DEPARTMENT OF EDUCATION
REGION I
JOHN W. McCORMACK POST OFFICE AND COURTHOUSE, ROOM 222
POST OFFICE SQUARE
BOSTON, MASSACHUSETTS 02109

DEC 27 2000

OFFICE FOR
CIVIL RIGHTS

Mr. Jon Westling
President
Boston University
881 Commonwealth Avenue
Boston, Massachusetts 02215

RE: Complaint No. 01-00-2059

Dear President Westling:

As we stated in our June 28, 2000 letter to you, on May 15, 2000 the Office for Civil Rights (OCR) received a complaint against Boston University (University) from (b)(7)(C) (Complainant), a student at the University in 1999-2000. The Complainant alleged that the University discriminated against her on the basis of sex by failing to adequately respond when she was sexually assaulted on University property and also failed to inform her of her rights after the assault. The Complainant stated that a University security guard immediately notified the University police about her assault and battery and dormitory staff quickly arranged crisis services for her. However, due to alleged errors in the procedure used by the University police to identify her assailant, she was not successful in filing criminal or civil charges against him. She further alleged that University administrators later failed to inform her of her right to file a complaint of sexual assault and battery against her assailant under University complaint and grievance procedures.

The Complainant also stated that because her attacker was still a student at the University, she did not feel safe and decided not to return to the University for the fall 2000 semester. According to the Complainant, not returning to the University to continue her education caused her to forfeit a University scholarship.

OCR accepted the complaint because it contains allegations that fall under the jurisdiction of Title IX of the Education Amendments of 1972, and its implementing regulations at 34 C.F.R. Part 106 (Title IX), which prohibit discrimination based on sex. The University is subject to the provisions and requirements of Title IX because it receives Federal financial assistance from the U.S. Department of Education.

Legal Standard:

Department regulations¹ require that a recipient, such as the University, designate at least one employee to coordinate its efforts to comply with Title IX, including conducting investigations of complaints alleging noncompliance or actions prohibited by Title IX. A recipient must also adopt and publish procedures for providing prompt and equitable resolution of student and employee complaints alleging discrimination based on sex in its educational programs and activities. In addition, the recipient must provide notification of its policy prohibiting discrimination on the basis of sex to, among others, applicants for admission and enrolled students.

In determining whether the University's procedures meet the prompt and equitable requirement under the regulation, OCR looks at whether the University has included elements such as: 1) notice to students and employees of the procedure and where to file complaints; 2) confidentiality for all parties; 3) protection from retaliation; 4) an opportunity to resolve the complaint at an informal level; 5) a thorough and impartial inquiry into the matter, including the opportunity to present evidence; 6) designated time frames for the resolution of complaints; 7) notice to parties of the disposition of complaints; and 8) the right for the parties to appeal the outcome.

Under Title IX, the University has an affirmative obligation to respond to knowledge of possible sexual harassment. The procedure should ensure that knowledge of possible sexual harassment is referred to the appropriate designated person. The person responsible for implementing the procedure should implement it upon verbal or written notice of possible harassment. Information of possible sexual harassment need not be in the form of a complaint. The University must tailor its response to address the incident alleged, even if the complainant wishes the information to remain confidential. OCR acknowledges that matters discussed in confidence may require special care to protect the individuals who ask that their identity not be revealed to any other person, or to more persons than necessary to resolve the issue. In determining whether sexual harassment has occurred, the University must employ current legal standards and analyses. In addition, information relevant and material to the issue and findings should be documented.

The University will be considered to have adequately responded to a situation of student to student harassment if it conducts a thorough and objective investigation, takes immediate steps to fully remediate any harm that occurred, and takes steps reasonably calculated to prevent sexual harassment from occurring in the future.

As part of our investigation of this complaint, OCR requested from the University, among other things, information about its Title IX policies and procedures, and about complaints of a similar nature from the 1998 through 2000 academic years. In addition,

¹ The applicable sections of 34 C.F.R. Part 106 of the Department Title IX regulation that apply to OCR's investigation of this complaint matter are Sections 106.8 (a) and (b) and 106.9 (a) (b) and (c).

we spoke with several members of the University's staff as well as the Complainant and her parent. Based on the information provided by the parties and the witnesses, we have determined that there is insufficient evidence to support a violation of Title IX by the University. The bases for our conclusions are presented below.

Facts and Analysis:

The Complainant reported that on or about February 5, 2000, she was sexually assaulted in a car after leaving a fraternity party. She reported the incident to the dormitory staff, who immediately called the University Campus Police. It is undisputed that the University's immediate response was timely and appropriate. They offered medical services to the Complainant, which she declined, and contacted her parents for her. Information provided by the Complainant and University also confirmed that the University arranged a referral for crisis counseling and services through the University's Student Health Center (Center). The Complainant eventually had a series of counseling sessions at the Center for stress related to the sexual assault.

OCR obtained a copy of the University's Title IX procedures as printed in the University's LifeBook, 1999/2000. The LifeBook, which contains the University's complaint grievance procedures, the office and administrator with whom to file a complaint of sexual assault, sexual harassment, domestic abuse and dating violence, is disseminated to all entering students. Indeed, the LifeBook contains an entire chapter pertaining to sexual assault. We reviewed the University's procedures and found that, on their face, they comport with the requirements of Title IX.

In addition to publishing their procedures in the LifeBook, the University annually offers freshman orientation, where such information is discussed by the University's Director of Judicial Affairs and the Campus Police Captain. The Title IX and sexual harassment policies and procedures are also posted on the University's web site. Complaints regarding this and any other form of discrimination may be filed at the Office of the Vice President and Dean of Students or the Vice President's Office of Judicial Affairs and Student Safety Programs. Contact numbers are listed for each Office.

The University also employs less formal approaches for disseminating information about the reporting and grieving of sexual harassment and assault and date-violence incidences. For example, during academic year 1999-2000 the Director of the dormitory where the Complainant lived provided informational sessions, including hall meetings, floor meetings and summer orientation, for students about safety concerns on campus.

We spoke with the Campus Police Officer (Investigator) who handled the case for the University and then turned his investigation information over to the Boston Police. He confirmed that he had advised the Complainant and her parent that, in addition to going to court to prosecute the sexual assault, the matter could be pursued internally through the University. The Complainant's parent recalled that a University police officer advised her that the student assailant could be removed from the University through a judicial review procedure, but she said she heard nothing further about that procedure. The

Investigator stated that the statement was made to the Complainant many times during his investigation, but in light of her physical and emotional state, he also advised the Complainant's parent that the University's internal procedures were available to them. He also reported that neither the Complainant nor her parent inquired any further about the University's process.

Title IX requires the University to adopt and publish grievance procedures for providing prompt and equitable resolution of sex discrimination complaints and to disseminate the policy to students, among others. In this case, the University provided notice of its policy and procedures to students, including the Complainant, in a variety of ways. Moreover, the Complainant's mother admitted finding language about Title IX in a University bulletin after being advised by OCR that university and college nondiscrimination policy statements and notices are routinely found in printed materials disseminated to students on an annual basis.

Within hours of receiving the Complainant's statement, the Campus Police began their investigation. The University informed us that when the Complainant identified her assailant from a photo array, she exhibited a great deal of hesitation and confusion. She stated that she was not entirely certain, merely that the photo "looks like him". The Campus Investigator reported that although the Complainant could provide some information, she was vague about details on the make and model of the car she was in. Also, despite being in very close proximity to the assailant, she had considerable difficulty identifying him or even remembering whether or not he was at the fraternity party. Nonetheless, the Investigator went to the fraternity house and interviewed its residents as well as persons who were and others who may have been at the party during the time the Complainant was present. He also interviewed the alleged assailant. In short, the alleged assailant was at the party but denied the attack and other witnesses denied knowledge of the attack or could not recall anything, reportedly due to the amount of alcohol consumed. On February 9th, three days after the reported sexual assault, Campus Police Officers discussed the assault with the members of the fraternity at a previously scheduled fraternity meeting. The officers also met with the Complainant for purposes of photographing and documenting her physical injuries. The injuries were consistent with the Complainant's report of the assault, however, there were many details left undocumented because the Complainant was reportedly under the influence of alcohol at the time the assault took place. The Campus Police opined that the Complainant was confused, shaken, and at times understandably frantic. Because they felt that they could not pursue the matter any further, they turned their information over to the Boston Police Department to assist them with the criminal investigation, as is customary. In addition, the University reported that they tried to arrange a police line-up with the Boston Police Department, which ultimately did not take place. The complaint against the alleged assailant was dismissed because, at the magistrate's hearing, the Complainant was unable to positively identify him as the person who had sexually assaulted her.

Based on the above, OCR found that the University followed its procedures for responding to sexual assaults. They took immediate steps to remediate any harm to the Complainant and undertook as thorough and impartial an investigation as they could

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under the circumstances. Unfortunately, the evidence was insufficient for them to conclude that the person identified by the Complainant was the person who assaulted her.

Based on OCR's investigation, we did not find sufficient information to support a violation of Title IX. Consequently, we are closing this complaint as of the date of this letter.

Thank you and your staff for your patience and cooperation. If you have any questions, please contact the investigator, Esther Walters at (617) 223-9682, or Donna L. Russell, Team Leader/Attorney, at (617) 223-9701.

Sincerely,


for Robert L. Pierce
Program Manager