



U.S. DEPARTMENT OF EDUCATION
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OFFICE FOR CIVIL RIGHTS

WENDELLA P. FOX
DIRECTOR
PHILADELPHIA OFFICE
EASTERN DIVISION

January 22, 2003

In response, please refer to: 03022075

Dr. Graham B. Spanier
President
Pennsylvania State University
University Park PA 15282

Dear Dr. Spanier:

The Office for Civil Rights (OCR), U.S. Department of Education (the Department), has completed its investigation of the above-referenced complaint, which alleged that Pennsylvania State University (the University) violated Title IX of the Education Amendments of 1972 (Title IX) by discriminating on the basis of sex. The complainant filed this complaint on behalf of her daughter, a University student (the student). The student alleged that, after informing University staff of offensive sexual acts which she endured in a University dormitory, the University failed to take action to end a sexually hostile environment. For the reasons discussed below, OCR has determined that the University is in compliance with the Title IX regulation with regard to this complaint.

OCR is responsible for enforcing Title IX and the Department's implementing regulation published at 34 C.F.R. Part 106, which prohibits discrimination based on sex in education programs receiving Federal financial assistance. The University is a recipient of Federal financial assistance from the Department and is, therefore, subject to the requirements of Title IX and its implementing regulation.

Pursuant to its enforcement responsibilities, OCR conducted an investigation of this complaint, which included a review of information and documents submitted by the University and the complainant and interviews with University representatives and staff and with the student.

Background

The student attended the University's summer session in 2002 and resided in a University dormitory. She was assigned to a room with another female student (the roommate). The student was enrolled in two architecture courses that she describes as complex and demanding. She maintains that the requirements of the courses necessitated that she work and study very late each night, often not returning to her dormitory room until 1 A.M. or 2 A.M.

The student told OCR that she had a friendly relationship with the roommate that was free of any conflict. Sometime in June 2002, the roommate advised the student that a male friend would soon be visiting the campus and that she wished for him to stay overnight in their room. The dormitory had a posted rule clearly stating that overnight visitors of the opposite sex were forbidden unless all roommates agreed. The student advised her that she did not want a man staying in their room while she was there. The student advised OCR that the roommate understood and agreed that her male friend would not sleep in the room overnight.

A day or two later, the student returned to the room at about 1 A.M. The roommate was not there and the student went to bed. She reports that she awoke several hours later and heard the sounds of kissing and giggling. In the darkness, she saw what she thought was the body of a man under blankets in the roommate's bed. She went back to sleep. When she awoke in the morning, the roommate was not there, but she saw a man sleeping in the roommate's bed, with the blankets pulled up to his chin or shoulders. She dressed and left the room.

She confronted the roommate later that day. The roommate told the student that the man had needed a place to sleep and that nothing "funny" had gone on.

The student sought out the dormitory student who functioned as their resident advisor (RA) to discuss the matter. She says that the RA treated the incident very casually and indicated that roommates needed to work out these matters. She told the student that there were vacant rooms in the dormitory and the two could separate if that would resolve the matter. The student recalls the RA as saying that she (the student) should move out because she had the problem. According to the RA, she indicated that the two could separate, but she did not specify that it was the student who should leave. The RA told OCR that the student said that she would try to resolve the matter herself with the roommate and she left the dormitory for her classes that day. The student told OCR that she attended class that day.

Two or three weeks later, in July 2002, the student returned to her room at about 2 A.M. The roommate was out and the student went to sleep. She told OCR that she awoke during the night after feeling a man's legs touching her legs. She heard the sounds of people having sex and saw two unclothed people in her roommate's bed, one person on top of another. She further stated that the male was unclothed. She stated that she didn't see her roommate clearly and couldn't tell if she had on clothes or not. The student advised OCR that she could see that her roommate was having sex with the male. She was frightened and very upset and began to hyperventilate and perspire heavily.

According to the student, the male stood up and was unclothed. She said that her roommate gave him a towel to put on. The roommate put on a T-shirt and she and the male left the room. They were gone for about five minutes when the roommate came back in the room and picked up the male's clothing. The roommate gave the clothes to the male and then closed the door. The student told OCR that at this point the roommate got in her bed and went to sleep.

The student reported the incident to her RA. Shortly thereafter, the student was moved to a temporary room for five days until the roommate returned to the University campus. The roommate was moved out of the room she had shared with the student. The student moved back in that room and, at her request, the University changed the locks to the room. The student told OCR that she still wasn't completely comfortable and had flashbacks and a feeling of powerlessness. She continued to hyperventilate.

The University provided the student with counseling for the remainder of the summer semester at no cost. (The student indicated to OCR that she is no longer in counseling.) University staff asked if she wished to have them prepare a letter to her instructors explaining that she had been affected by a difficult situation, perhaps so that she could request "incompletes" in her two courses. She declined the offer of a letter.

The student stated that she wrote a statement about what had happened for the University's Judicial Affairs Office (JAO). She also told OCR that JAO developed an agreement directing that the roommate would have no further contact with the student, and vice versa.

According to the University, the JAO determined that the roommate had violated the rule about overnight guests. She was placed on Contract Review until the end of the Fall 2002 semester. Contract Review is an administrative intervention that serves as a kind of residence hall probation; if there are any additional residence hall violations during the probationary period, the residence contract is terminated and the individual is evicted.

The student was asked about her final grades for the summer. She stated that she received a grade of B in her Architectural Studio Entrance Class and an A- in Architectural Theory. She stated that she had numerous complex assignments that required a clear mind in order to properly focus on them, including an important final project. She stated that she didn't have a clear mind because of what happened with her roommate, and her final grades suffered as a result.

The roommate admits that the two overnight visits discussed above occurred without the student's approval. She denies that she or her visitors were ever unclothed or engaged in sex acts during either occasion.

Legal Background

The Title IX implementing regulation prohibits discrimination on the basis of sex. Sexual harassment is one type of sex discrimination. One type of sexual harassment is the creation of a sexually hostile environment. A sexually hostile environment is produced by unwanted, offensive statements or acts of a sexual nature that are sufficiently severe, pervasive, and/or persistent to cause an abusive, offensive, or intimidating environment for persons because of their sex. A single or isolated incident of sexual harassment may, if sufficiently severe, create a hostile environment.

Examining an alleged sexually hostile environment requires a further assessment of whether or not the conduct is sufficiently serious to deny or limit a student's ability to participate in or benefit from the school's program based on sex. Unwanted, sexually offensive acts that interfere with a student's academic performance and/or emotional well being can create a sexually hostile environment.

In order for conduct of a sexual nature to be sexual harassment, it must be unwelcome. Conduct is unwelcome if the student did not request or invite it and regarded the conduct as undesirable or offensive.

The circumstance in which the behavior occurs is critical in determining whether a sexually hostile environment exists. Harassing conduct in a personal or secluded area, such as a dormitory room, can have a greater effect (e.g., be seen as more threatening) than would similar conduct in a more public area.

A student may be sexually harassed by another student or a non-employee third party (e.g., a campus visitor). Moreover, Title IX prohibits sexual harassment regardless of the sex of the harasser, i.e., even if the harasser and the person being harassed are members of the same sex. A sexually hostile environment can occur even if the harassment is not targeted specifically at the individual complainant.

If a school knows or reasonably should know about the harassment of a student by another student, or by a third party, the school is responsible for taking immediate effective action to eliminate the sexually hostile environment, prevent its recurrence, and remedy the effects of the harassment. As long as the school, upon notice of the harassment, takes these steps, OCR will find that the school has carried out its responsibility and is in compliance with the Title IX regulation.

Analysis – June 2002 incident

The student admits that she did not see or hear any sexual activity in this first incident, nor did she see anyone who was unclothed. She indicated that she was not touched. After reporting the incident to her RA, she went to her classes.

Although this was shocking and unpleasant to the student, a reasonable person viewing the totality of circumstances would not conclude that a severe act of sexually offensive behavior occurred that had the effect of denying or limiting the student's ability to participate in or benefit from the school's program. We reach this conclusion despite the student finding this behavior to be unacceptable and a violation of the understanding that she felt that she and her roommate had achieved.

Thus, we cannot conclude that when she discussed the matter with her RA, the University was made aware of a sexually hostile environment such that it had a duty, *at that point*, to take the necessary steps to end, prevent, and ameliorate the effects of sexual harassment.

Analysis – July 2002 Incident

If the student's recollection of the events in the July incident is accurate, and the roommate's assertion that there was no nudity and no sex acts is not accurate, this incident meets the legal definition of a sexually hostile environment.

According to the student, a strange male touching her awakened her and she saw and heard sexual activity occurring very close to her bed. Soon after, she saw the unknown man standing naked near her. This activity was clearly both unwanted and unwelcome by the student. We also note that it occurred very late into the night in the small confines of a closed dormitory room.

Following the incident, the student says that she was unable to properly concentrate on her academic work. She reports that her A- and B grades would have been higher had she not experienced this upsetting situation.

Whether or not this incident created a sexually hostile environment, and the evidence suggests that it did, the University acted appropriately once the student reported what had occurred. The student was briefly given another room, the roommate was removed from the shared room, and the student was returned to her original room. The University changed the locks. The roommate was charged with a University offense and placed on a kind of residence probation. The University issued an order that effectively kept the student and the roommate apart. We conclude that these prompt steps successfully ended the threat of the sexual harassment of the student, and prevented a recurrence.

The University provided the student with counseling at no cost to her, and University staff offered to inform the student's instructors of the student's situation. Thus, we conclude that the University promptly acted to ameliorate the effects of the events endured by the student.

We also note that the University has in place an appropriate grievance procedure for complaints of sex discrimination. The procedure is published and well publicized.

It is clear that the student and the University continue to disagree as to the seriousness of the events experienced by the student. Nevertheless, the University's actions following notice of the July 2002 incident were a proper response to a report of a sexually hostile environment created by a student and third party that was offensive to another student.

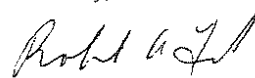
Based on a thorough analysis of the evidence, OCR has concluded that the University did not violate the Title IX regulation with respect to the complainant's allegation of sexual harassment. We find that the University is in compliance with Title IX and its implementing regulation as they relate to the issues raised by this complaint.

This letter is not intended nor should it be construed to cover any other issues regarding the University's compliance with Title IX and its implementing regulating regulation that may exist and are not discussed herein. 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.

Please be advised that 34 C.F.R. §100.7(e) of the regulation implementing Title VI of the Civil Rights Act of 1964, which is incorporated by reference in the Title IX regulation, at 34 C.F.R. §106.71, prohibits the harassment or intimidation of individuals who file complaints with OCR and those who cooperate with our investigations.

Thank you for the cooperation of your staff in this matter. If you have any questions about this letter, please contact OCR Senior Attorney David A. Friedman, at (215) 656-8545, or by e-mail, at David.Friedman@ed.gov.

Sincerely,



Robert A. Ford
Team Leader

cc: Andrea Commaker, Esquire