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MAY 27 2005

Mr. Carl V. Patton
President
Georgia State University
33 Gilmer Street SE
Atlanta, Georgia 30303-3080

Dear Mr. Patton:

Re: Complaint #04-04-2107

This letter is to notify you of the determination of the U.S. Department of Education (Department), Office for Civil Rights (OCR), regarding the above-referenced complaint filed against Georgia State University (University). The Complainant alleged that the University discriminates on the basis of sex regarding sexual harassment and retaliation.

As a recipient of Federal financial assistance from the Department, the University is subject to the provisions of Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. Section 1681 *et seq.* and its implementing regulation, 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any education program or activity receiving Federal financial assistance; and Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. Sections 2000d *et seq.*, and its implementing regulation, 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin.

In investigating these issues, OCR reviewed relevant policies and procedures and other documents provided by the University. Additionally, interviews were conducted with the Complainant and faculty and staff of the University. OCR's findings and conclusions are summarized below.

Legal Standards

The regulation implementing Title IX at 34 C.F.R. Section 106.8 (a) requires that the University designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX, including the investigation of any complaints

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alleging any action which would be prohibited by Title IX. The University must also notify students and employees of the name, office, address, and telephone number of the designated employee. Section 106.8 (b) requires that the University adopt and publish grievance procedures providing for the prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited by Title IX. Section 106.9(a) requires that the University notify students, employees, and other interested parties of its policy prohibiting discrimination on the basis of sex. The notification shall contain the University's prohibition against discrimination in its programs and activities, and it should identify the employee designated to handle complaints.

The regulation implementing Title IX at 34 C.F.R. Section 106.31(a) states that no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity operated by a recipient. The regulation at 34 C.F.R. Section 106.31 (b) (1-4) and (7) provides that a recipient shall not on the basis of sex: treat one person differently from another in determining whether such person satisfies any requirements or condition for the provision of such aid, benefits, or services; provide different aid, benefits, or services or provide them in a different manner; deny any person such aid, benefit, or service; subject any person to separate or different rules of behavior, sanctions; or otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

Allegations of sexual harassment are evaluated under the above provisions. OCR's policy on sexual harassment provides that, once a school has notice of possible sexual harassment, whether carried out by employees, other students, or third parties, it should take immediate and appropriate steps to investigate to determine what occurred and take steps reasonably calculated to end any harassment, eliminate a hostile environment if one has been created, and prevent harassment from occurring again.

Title IX and its implementing regulation at 34 C.F.R. at 106.71, which incorporates by reference Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. Sections 2000d et seq., and its implementing regulation at 34 C.F.R. 100.7(e) also prohibits retaliation. Specifically, the regulation states that no recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the regulation, or because he or she has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under this part.

According to the Complainant, on March 1, 2004, she stayed after class to request clarification from her Professor regarding a research paper that she was assigned to write. The Complainant stated that during the course of the conversation, the Professor unfastened her pants to adjust a back support, and the Professor's pants fell to the floor in her presence exposing the Professor's buttocks. The Complainant stated that she immediately left the classroom after the incident and that she considered this to be an act of sexual harassment by the professor. Based on the Complainant's statement, OCR investigated the following issue:

Allegation 1

Whether the University failed to conduct an appropriate investigation of the Complainant's allegation of sexual harassment and take prompt and effective remedial action after the incident occurred.

Findings

The University's policy states that unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature constitute sexual harassment when a) submission to such conduct is made explicitly or implicitly a term or condition of an individual's employment or academic standing; b) submission to or rejection of such conduct by an individual is used as a basis for employment or academic decisions affecting an individual; or c) such conduct unreasonably interferes with an individual's work or academic performance or creates an intimidating, hostile or offensive working or academic environment.

The University's Sexual Harassment Grievance Procedures provides that a complainant may elect any of the three University procedures regarding an investigation. The complainant may consult informally with a counselor in the University Counseling Center or with the University Ombudsperson, or the complainant may submit a formal complaint with the affirmative action officer (AAO). All complainants are encouraged to explore informal procedures before filing a formal complaint. The Informal Grievance Procedures discuss counseling and mediation. A complainant that wants to participate in the mediation process is instructed to contact the Ombudsperson. A complainant does not file a written complaint at the mediation stage.

The Formal Grievance Procedures state that the formal process can be initiated when the complainant files a signed complaint with the AAO. Disciplinary action may include, but is not limited to warning, reprimand, demotion, suspension, or dismissal. A copy of the formal complaint will be provided to the person accused and to the appropriate administrator: the accused's first line supervisor (for staff), department chair (for faculty), and the dean of students (for students). If the supervisor, department chair, or other administrator is the person against whom the complaint is brought, the next line supervisor or the appropriate dean or vice-president will be the appropriate administrator cooperating in the investigation and its resolution.

Within ten (10) business days of receipt of the complaint, the alleged harasser or his or her attorney will provide a signed response to the AAO. A copy of the response will be provided to the complainant and the appropriate administrator. If the alleged harasser fails to respond, it will be presumed that the allegations set forth in the complaint are correct. Within fifteen days of receipt of the signed response, the AAO will consult with the complainant, the appropriate administrator, the person against whom the complaint is made and/or other appropriate persons in an effort to resolve the matter or determine whether further investigation is warranted. Every effort will be made to report the finding within sixty (60) days of receipt of the written complaint.

If for any reason an extension in the above procedures is necessary, the complainant will be informed in writing of the reasons for the extension, the status of the investigation, and the probable date of completion. If, in the course of the investigation, the AAO determines that further action is needed, discussions will be initiated with the appropriate administrator to attempt to resolve the complaint. A formal investigation can be terminated at any time should a satisfactory resolution be reached before a written finding is made. Upon completion of the investigation, the AAO will notify the complainant, the alleged harasser, and the appropriate administrator, in writing, of the findings and recommendations.

According to the Complainant, on March 3, 2004, she met with the Department Chairperson (Chair) to discuss the incident involving the Professor that occurred on March 1st. The Complainant provided the Chair a written statement of her allegations at the Chair's request. On March 9, 2004, the Chair met with the Professor to discuss the Complainant's allegations. The Complainant was then administratively withdrawn from the Professor's course and assigned to work with a new professor because the Complainant stated that she no longer felt comfortable working with the Professor.

The Chair requested that the Professor provide a written response to the Complainant's allegations. According to the Professor, on March 15, 2004, she provided the Chair a written response to the Complainant's allegations and was informed that all information regarding the incident would be included in her employee file. The Professor admitted to the incident but denied the allegation of sexual harassment. The Chair stated that she addressed the matter informally by reassigning the Complainant to a new professor as a remedy, so she did not provide the Complainant any written notification of her findings.

According to the Chair, she referred the Complainant to the Ombudsperson for a formal review of her complaint allegations because she continued to express concern regarding the incident. The Complainant stated that she contacted the Ombudsperson and informed her that she wanted to file a formal complaint. The Ombudsperson referred her to the Office of Affirmative Action (OAA)/Office of Opportunity Development (OOD). On March 10, 2004, the Complainant filed a complaint of sexual harassment with the OAA/OOD. The Assistant Vice President (AVP) of the OAA/OOD, along with two investigators, handled the complaint. The AVP also serves as the AAO.

According to the AVP, the Complainant did not complete a questionnaire or any other required documentation for a complaint to be considered formal because she was too upset regarding the incident. However, the AVP stated that the Complainant's allegations were investigated as a formal complaint of sexual harassment. The AVP stated that she deviated from the procedures outlined in the University's policy because the Professor admitted to the incident in a written statement (although the intent was disputed). The AVP also stated that she reviewed documentation obtained by the Chair during her investigation in making a determination.

In a letter dated April 23, 2004, the AVP determined that the Professor's conduct unreasonably interfered with the Complainant's academic environment. In a memorandum dated April 23, 2004, the AVP recommended that the Professor receive formal counseling for her poor judgment regarding the findings that she inappropriately exposed herself to the Complainant. However, neither the letter nor the memorandum were in fact sent to the Complainant. The AVP stated she attempted twice, unsuccessfully, to mail the letter to the Complainant. The Complainant stated that she did not obtain a copy of the documents until she visited the office personally and retrieved them on June 9, 2004.

Documentation provided by the University indicates that the request for disciplinary sanctions against the Professor should have been taken to the appropriate dean of the college (Dean), who in consultation with the Chair would make the final decision. The decision should then have been forwarded to a committee who would make a recommendation on the matter and forward the recommendation to the Dean. The Complainant has a right to appeal the final decision. However, the AVP informed OCR that the memorandum was not reviewed by any of the individuals responsible for enforcing the recommendations. The Professor also informed OCR that she was not contacted regarding the recommendation contained in the April 23rd memorandum and has not received any counseling.

Based on the above, OCR has determined that the University has developed a policy and procedures for addressing complaints of sexual harassment. As such, the University is responsible for ensuring that investigations are completed consistent with the policy requirements. Evidence shows that while the University initiated an investigation, OCR found that the AVP failed to properly complete the investigation and ensure that the recommended corrective action was reviewed and implemented by the appropriate University officials. To date, the recommended disciplinary actions have not been taken against the professor. Further, the Complainant was not informed of her right to appeal the final disciplinary decision. Therefore, OCR concludes that there is sufficient evidence to support a finding that the University is not in compliance with Title IX since the investigation was not fully completed.

In order to correct this area of noncompliance, the University has agreed to take the actions identified in the attached Resolution Agreement.

Allegation 2

Whether the University discriminated against the Complainant by failing to provide her a copy of its Title IX policy and grievance procedures.

The Complainant stated that she was not provided a copy of the University's sexual harassment policy, and she was unsuccessful in locating the policy on the University's website. She also stated that an investigator in the OAA/OOD office later instructed her how to properly locate the policy on the website in the library, student center, and recreation center.

According to the AVP, the University's sexual harassment policy and grievance procedures are included in the Faculty Handbook available through the University website, under the OAA/OOD website, and the College of Arts and Sciences website. In addition, the University stated that all students have access to the University's website in the library.

The University also has a Student Handbook (Handbook) that contains a brief statement regarding the University's sexual harassment policy. The Handbook advises students that copies of the harassment policy and procedures may be obtained at the OAA/OOD office and the Office of the Ombudsperson (Office). The Handbook is not disseminated to students, but it is available online. The University refers all students to the website, or instructs students to obtain a copy of the procedures from the appropriate campus location. According to the AVP and the University's general counsel, the University does not have an official Title IX Coordinator (Coordinator). Therefore, none of its publications contain the Coordinator's name and contact information, including the Handbook and website.

Based on the above, the University's sexual harassment policy and procedures are available to students through the University's website. In addition, the University's Handbook, which is also available on the website, informs students where to obtain information on the University's sexual harassment policy and procedures. The Complainant was provided appropriate assistance in locating the policy by contacting one of the offices referenced on the website and in the Handbook. Also, each student is provided access to the University's website. OCR found, however, that the University has not designated a Coordinator and does not list appropriate contact information for the Coordinator in any of its publication. Therefore, OCR concludes that there is sufficient evidence to support a finding that the University is not in compliance with Title IX with respect to this issue.

In order to correct this area of noncompliance, the University has agreed to take the actions identified in the attached Resolution Agreement.

Allegation 3

Whether the Complainant was subjected to retaliation when a professor changed her grade from an A to a B after she filed a complaint of sexual harassment against her professor.

In order to determine whether retaliation occurred, OCR's retaliation analysis focused on the following elements: (1) whether the Complainant engaged in a protected activity; (2) whether the University was aware of the protected activity; (3) whether the University took adverse action against the Complainant; (4) whether there was a causal connection between the adverse action and the protected activity; and (5) whether the University can show legitimate, non-retaliatory reasons for its actions.

Protected Activity and Knowledge of the Protected Activity

The Complainant participated in a protected activity on March 1, 2004, when she filed a complaint of sexual harassment against the Professor. The University was aware of the protected activity because the Complainant informed the Chair, the ombudsperson, and the AVP of her complaint allegations. The Chair also informed the Professor of the Complainant's allegations against her. The evidence shows that the Complainant engaged in a protected activity and the University was aware of the protected activity.

Adverse Action

As noted above, the Complainant was administratively withdrawn from the Professor's course and assigned to work with a new professor. The Complainant stated that she asked for her grade in the course at the time she was withdrawn.

According to the Chair, she requested the Complainant's grade in the course during her March 9th meeting with the Professor, and the Professor stated that she believed the Complainant's grade an A, but she would need to verify the information. The Chair stated that she verbally communicated the grade immediately to the Complainant. The Professor stated that after reviewing her grade book, she informed the Chair that the Complainant's grade was, in fact, a B. According to the Professor, the Complainant was the only Ph.D. student in the class, so her grade was based on Ph.D. standards, which resulted in a grade of B.

The Chair informed OCR that in order to remedy her error of prematurely communicating the grade to the Complainant, she weighted the grades so that the Professor's grade would only count for forty (40%) percent of the Complainant's grade, and the new professor's grade would count for sixty (60%) percent of her final grade. The Chair stated that this was to assure that the Professor's grade would not affect the Complainant's final grade in the course. The Complainant ultimately received an incomplete in the Professor's course. The Complainant has been assigned to work with a new professor; however, she has not yet completed the course to receive a final grade.

In order to establish a case of retaliation, OCR must determine that an adverse action has occurred. The Chair verbally informed the Complainant that she had a grade of A in the Professor's course after the Complainant was administratively withdrawn based on her complaint of sexual harassment. However, the Chair communicated the grade to the Complainant in error prior to verification by the Professor. The Chair attempted to remedy the situation by assigning percentages to ensure that the Complainant's grade would be based on her new professor's grade. In addition, the Complainant has not yet completed the course, so it cannot be established that the change in grade actually resulted in harm to the Complainant.

Conclusion


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OCR determined that the University did not retaliate against the Complainant because she was not subjected to an adverse action when her grade was changed from an A to a B. It was found that the Chair communicated the grade of A to the Complainant in error prior to verification by the Professor.

As is our standard procedure, OCR will monitor the implementation of the agreement from the University. The agreement and reporting requirements are enclosed. Please note that under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If we receive such a request, we will seek to protect, to the extent possible, any unwarranted invasion of privacy. In addition, intimidation or retaliation against complainants by recipients of Federal financial assistance is prohibited. No recipient may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the laws OCR enforces, or because one has made a complaint, or participated in any manner in an investigation in connection with a complaint.

The letter concludes the investigative phase of this complaint. However, as stated above, OCR will monitor to ensure full implementation of the agreement. We appreciate your cooperation and that of your staff, during the investigation. If you have any questions regarding this matter, please contact Ms. Ledondria H. Saintvil, Attorney, (404) 562-5461, or me at (404) 562-6392.

Sincerely,


Laura M. Hitt, Esq.
Team Leader

Enclosure

RESOLUTION AND MONITORING AGREEMENT
U.S. DEPARTMENT OF EDUCATION, OFFICE FOR CIVIL RIGHTS (OCR)
GEORGIA STATE UNIVERSITY
COMPLAINT #04-04-2107

In order to resolve the allegations regarding sexual harassment and retaliation at Georgia State University (University), the University agrees to implement the commitments stated below in this Resolution Agreement (Agreement). The Agreement reflects voluntary actions to be taken by the University to address OCR's investigative findings pursuant to Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. Section 1681 *et seq.* and its implementing regulation, 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any education program or activity receiving Federal financial assistance; and Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. Sections 2000d *et seq.*, and its implementing regulation, 34 C.F.R. Part 100, which prohibit discrimination on the basis race, color, or national origin.

Corrective Actions

All of the corrective actions listed below must be taken by August 30, 2005.

1. The University will submit the recommendation for disciplinary sanctions against the Professor to the appropriate University officials for review and provide the Complainant notice of the final disciplinary decision. The Complainant will also be notified of her right to appeal the final decision.
2. The University will designate a Title IX Coordinator (Coordinator), and publish the Coordinator's name, official address, and telephone number in its student handbooks, catalogs, applications forms, bulletins, and on its website.
3. The University will amend its Title IX notice of nondiscrimination to include the name, official address, and telephone number of the University's designated Coordinator.
4. The University will disseminate the updated publications to faculty, staff, and students.
5. The University will ensure that its Coordinator and staff in the OAA/OOD are trained regarding how to properly process Title IX grievances, including sexual harassment complaints.

Monitoring Requirements

1. By October 15, 2005, the University will provide OCR a written update on the University's review of the proposed disciplinary sanctions and any subsequent appeals by the Complainant to include a) copies of all notices sent to University

officials regarding the recommended disciplinary sanctions for the Professor, b) the final disciplinary decision for the Professor, c) a copy of any notification provided to the Complainant regarding her right to appeal.

2. By October 15, 2005, the University will provide OCR with copies of its updated publications, or with copy of the publications with an insert that contains the Coordinator's name, official address, and telephone number. The University should also provide documentation that the information has been included on its website.
3. By October 15, 2005, the University will inform OCR how and when the updated publications or publications with inserts were disseminated to faculty, staff, and students.
4. By October 15, 2005, the University will provide OCR with documentation showing that the University's Title IX Coordinator and the staff at the OAA/OOD have been trained regarding Title IX, and proper grievance procedures.



President of ~~University~~

5/24/05

Date