



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

November 7, 2008

Dr. Modesto A. Maidique, President
Florida International University
PC 528
Miami, Florida 33199

Re: OCR Docket # 04-08-2118

Dear Dr. Maidique:

The U.S. Department of Education (Department), Office for Civil Rights (OCR) has completed its investigation of the above-referenced complaint that the Complainant filed on May 13, 2008, against Florida International University (University), alleging retaliation on the basis of sex. Specifically, the Complainant alleged that after he complained to the University about a professor making statements of a sexual nature, the University retaliated against him by not allowing him to register for classes unless he provided an official transcript from the college he previously attended.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq., and its implementing regulation, 34 C.F.R. Part 106. Title IX prohibits discrimination on the basis of sex in education programs and activities that receive Federal financial assistance from the Department. As a recipient of Federal financial assistance from the Department, the University is subject to Title IX and its implementing regulation. Accordingly, OCR has jurisdiction over this complaint.

OCR investigated the following issue:

- o Whether the University retaliated against the Complainant on May 5, 2008, by not allowing him to enroll in classes, after he complained about an instructor making statements that were sexual in nature, in violation of 34 C.F.R. § 106.71.

During the complaint investigation process, OCR reviewed information provided by the Complainant and the University and interviewed the Complainant and University personnel. Based on the available evidence,

61 (URR)78 (7) S.W. 212E HOTEL, ATLANTA, GA 30303
404-582-4350, Fax: 404-582-4355, TDD: 404-582-4454
www.ed.gov

Our mission is to ensure equal access to education and to promote educational excellence throughout the Nation.

OCR found insufficient evidence to support a finding that the University is in noncompliance with the regulations implementing Title IX, with regard to the issue investigated. Set forth below is a summary of OCR's findings.

Legal Standards

The regulation implementing Title IX at 34 C.F.R. § 106.71, incorporates by reference the procedural provision of the regulation implementing Title VI of the Civil Rights Act of 1964 (Title VI) at 34 C.F.R. § 100.7(e), which provides 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 laws OCR enforces, or because he or she has made a complaint, testified, assisted, or participated in any manner in an investigation or other matter in connection with a complaint.

In order to determine if retaliation in violation of Title IX has occurred, OCR must determine whether: (1) the complainant engaged in an activity protected by Title IX; (2) the recipient was aware of the protected activity; (3) the recipient took adverse action against the complainant contemporaneous with or subsequent to the protected activity; and (4) a causal connection between the adverse action and protected activity can reasonably be inferred. If these elements are established, OCR next examines whether the recipient has a legitimate, nondiscriminatory and nonpretextual reason for its action.

Factual Findings

Background Facts

The Complainant first enrolled as a student at the University in Spring 2002, and continued until Summer 2004. In early 2007, the Complainant applied for reenrollment, and was admitted in March 2007. The Complainant enrolled in classes in Summer 2007, but did not take any classes in Fall 2007 or Spring 2008. At the time of his readmission in March 2007, the University conditioned his acceptance upon the Complainant's providing official transcripts for all other post-secondary schools he had previously attended.

On September 7, 2007, the Complainant filed a complaint of sexual harassment and retaliation with the University's Office of Equal Opportunity Programs. The University investigated his complaint and concluded that he was not subjected to sexual harassment or retaliation. Subsequently, in the spring of 2008, after failing to provide the University with official transcripts from all previously attended post-secondary schools, the Complainant was informed that he was not allowed to enroll in

courses at the University until he fulfills this requirement. The Complainant informed OCR that he is not able to obtain those transcripts because he is in arrears with one of the previously attended schools.

Protected Activity and Knowledge of the Protected Activity

The Complainant filed a complaint on September 7, 2007, with the University's Office of Equal Opportunity Programs alleging that a professor sexually harassed him and that another employee retaliated against him. On January 7, 2008, the Director of Equal Opportunity Programs sent the Complainant a letter acknowledging receipt of his complaint. OCR finds that the Complainant engaged in a protected activity, of which the University was aware.

Adverse Action Subsequent to Protected Activity

In determining whether an action is adverse, OCR examines whether the recipient's action significantly disadvantaged the complainant or student in his or her ability to gain the benefits of the recipient's program.

The Complainant alleged that on May 5, 2008, he was not allowed to register for classes after filing complaints of sexual harassment and retaliation. OCR finds that not being permitted to register for classes constitutes an adverse action.

Causal Connection

Having established that the Complainant engaged in a protected activity, that the University had knowledge of the protected activity, and that an adverse action occurred, OCR then assessed the evidence to determine whether there was a causal connection between the adverse action and the protected activity. One factor OCR considers in making such a determination is close proximity in time between the recipient's knowledge of the protected activity and the adverse action.

The Complainant's protected activity began in September 2007, when he filed a complaint with the University and continued through the spring of 2008. The Complainant was not allowed to register for classes on May 5, 2008. OCR concludes that there is close proximity in time between the date of the protected activities and the date of the adverse action.

Reasons for the Recipient's Actions

The University, a public institution within the State University System of Florida, is funded in large part by the State of Florida, and as such is bound

by a number of statutes regarding its control and operation. It is both University policy and a state requirement under the Florida Administrative Code that transferring students submit official transcripts from schools they previously attended. The University states its policy on its website for prospective transfer students. If the official transcripts are not provided with the application, the transferring student may be granted a provisional admission to the University, contingent upon the applicant providing those transcripts to the University. Rule 6C-6.004(2) of the Florida Administrative Code requires that each university require transfer applicants to submit complete academic transcripts from all previous institutions attended.

In the spring of 2007, when the Complainant was readmitted to the University, he was informed that he would have to provide official transcripts from all previous post-secondary institutions that he attended in order to complete his application. On July 2, 2007, the Assistant Vice-President for Enrollment Management sent the Complainant a letter informing him that his admission file was still incomplete because the University was missing a transcript from Johnson & Wales University. On October 18, 2007, Dean West responded to the Complainant's email about graduating and reminded him that he still had not submitted a certified transcript from Johnson & Wales University. On April 15, 2008, the Vice-President for Academic Affairs responded to the Complainant's email and reminded him of the University's policy that "official transcripts from all previous post-secondary institutions must be forwarded to the Office of Admissions." On April 23, 2008, Dean West responded to the Complainant's submission of unofficial transcripts from Johnson & Wales University by reminding him that the University requires official transcripts from previous post-secondary institutions. On April 24, 2008, the Vice-Provost for Academic Affairs responded to the Complainant's belief that the University could accept unofficial transcripts from a previous post-secondary institution, and referred the Complainant to page 48 of the Undergraduate Catalog, which requires students to submit official transcripts from all previous post-secondary institutions attended. The Complainant was notified that a hold was placed on his ability to register for classes, until the official transcript is provided.

The University's policy is to give transferring students one semester to provide final transcripts to the Registrar's office to complete the admission process. After that semester, students are supposed to be put on a registration hold until they provide the transcripts.

The Complainant contended that a hold was not placed on his ability to register for classes when he was first admitted to the University in 2002. The University responded that it has always been University policy to require official transcripts from previous post-secondary institutions, and

that the University erred in not placing a registration hold on the Complainant previously.

After a thorough review of all of the available evidence, OCR, finds that state law and University policy require all students to submit official transcripts from all previously attended post-secondary institutions. This policy is published on the University's website, Undergraduate Catalog, and the Complainant was reminded of this on multiple occasions by University staff before and after he engaged in protected activity. OCR concludes that the University had legitimate, non-discriminatory reasons for its actions that were not a pretext for discrimination. Accordingly, OCR finds that the University did not retaliate against the Complainant, in noncompliance with Title IX, with regard to the issue investigated.

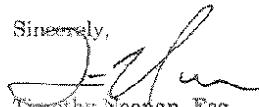
Conclusion

Based on the foregoing, OCR concludes that there is insufficient evidence to support a finding that the University is in noncompliance with Title IX with regard to the issue investigated in this complaint. This letter concludes OCR's investigation of this complaint.

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 provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of privacy. 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 opportunity 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.

We wish to thank you and your staff for its cooperation in the resolution of this complaint. If you have questions or concerns regarding OCR's determination or this letter, please contact Serena Mosley-Day, at (404) 562-6359, or me at (404) 562-3077.

Sincerely,



Timothy Noonan, Esq.
Compliance Team Leader