



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS
MIDWESTERN DIVISION, CHICAGO OFFICE

Dr. Richard Ridenour
President
Marian College of Fond du Lac
45 S National Avenue
Fond du Lac, WI 54935

JUN 29 2005

Re: #05-05-2026

Dear Dr. Ridenour:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above referenced complaint filed against the Marian College of Fond du Lac (College) that alleged discrimination on the basis of sex. The Complainant alleged that the College discriminated against him on the basis of sex when the College failed to adequately address a September 25, 2004 incident of employee-to-student harassment. Specifically, the Complainant alleged that the College failed to adequately address his report that the female Professor (Professor) of the course Educational Research TDE-638 subjected the Complainant to unwelcome touching during a class on September 25, 2004.

As a recipient of Federal financial assistance from the Department, the College is subject to the provisions of Title IX of the Education Amendments of 1972 that prohibits discrimination on the basis of sex. Accordingly, OCR has jurisdiction over this complaint.

During its investigation, OCR examined evidence from the College and the Complainant, interviewed the Complainant, and interviewed College employees and students. OCR determined that there is insufficient evidence to substantiate the Complainant's allegation that the College failed to adequately address his report of employee-to-student sexual harassment. The basis of OCR's determination follows.

College Policy and Procedures

Graduate students in the School of Education receive a copy of the College's "School of Education Graduate Information Guide" (Guide) each school year. The College policy entitled "Harassment Policy" (Policy) is contained in the Guide. The Policy prohibits sexual harassment. The Policy defines sexual harassment as unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature. The Guide delineates the procedure by which students can file complaints of sexual harassment. It further specifies that such complaints may be oral or written. The Guide identifies six College administrators who are charged with responding to reports of sexual harassment, including the Vice President of Academic Affairs (Vice President) and the Dean of the

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School of Education (Dean). According to the Guide, any report of sexual harassment is to be investigated.

The Vice President explained to OCR that the College's investigation of a report of sexual harassment is to consist of interviews of the reported victim and reported perpetrator. The Vice President continued that the College would interview other individuals only if the facts presented by the reported victim and reported perpetrator were not clear-cut. The Vice President indicated to OCR that the Guide does not contain explicit timeframes for the processing of student reports of sexual harassment. Nevertheless, according to the Vice President, it is the College's practice to respond to a student report of sexual harassment quickly. The Vice President specified that a party may appeal an investigation's outcome to the President. According to the Vice President, there are no specific time frames applicable to processing an appeal.

Also in the Guide is a procedure for grievances. A grievance is to be handled informally first. If the grievance cannot be resolved informally, the student may file a formal grievance with the College.

Reported Incident of Sexual Harassment

In the fall 2004, the Complainant was a candidate for the Master of Arts (MA) degree in education. He and ten other graduate students were participating in the Professor's TDE-683 class. According to the Complainant, during the September 25, 2004 class, the Professor stood behind his chair and gave him a neck and shoulder massage. While doing so, according to the Complainant, the Professor remarked in front of the students that the Complainant was tight and that the Complainant should not get his "undies" in a bind. The Complainant further stated that the Professor massaged his shoulder area for about one minute. The Complainant stated he felt mortified and helpless during the incident. The Complainant viewed the Professor's actions to be sexual harassment. He was the only male in the class and he had not observed the Professor treating female students similarly. As a result of the incident, the Complainant withdrew from the course and has not continued in the degree program.

On October 1, 2004, the Complainant wrote a letter to the Dean and Associate Dean of the School of Education (Associate Dean). In the letter, the Complainant reported that the Professor had touched him inappropriately. The Complainant characterized the Professor's behavior as sexual harassment.

Upon receiving the Complainant's letter, on or about October 5, 2004, the Associate Dean discussed the matter with the Dean. The Associate Dean investigated the incident by talking with the Complainant and the Professor. The Associate Dean explained to OCR that she reviewed the Policy and its definition of sexual harassment. The Associate Dean then questioned the Complainant to obtain further clarification of the report of sexual harassment.

On October 8, 2004, the Associate Dean informed the Professor that the Complainant had filed a report of sexual harassment. The Professor recounted that, during the September 25, 2004 class, she touched the Complainant lightly three times on the back at a pressure point. She stated she did so to maintain order in the class and to prevent the Complainant from taking over the class discussion. The Associate Dean concluded that the Professor did not engage in sexual harassment of the Complainant. The Associate Dean accepted the Professor's characterization of her actions on September 25, 2004 as an effort to maintain order in the class.

The Associate Dean suggested to the Professor that she write a letter of apology to the Complainant to explain that the Complainant had misinterpreted the Professor's actions and that the Complainant was welcome to return to TDE-638. On October 8, 2005, the Professor wrote a letter to the Complainant apologizing for any discomfort the Complainant experienced during the September 25, 2004 class. The Professor explained that she had touched the Complainant's shoulder blade in an attempt to allow other students to join the discussion. She described her action as classroom management. She apologized for intruding into the Complainant's personal space and encouraged him to remain in the course.

On October 12, 2004, the Associate Dean received a voice mail message from the Complainant expressing dissatisfaction with the Professor's letter of apology. He asked to withdraw from TDE-638 without penalty, to be issued a full refund for tuition for the course, and that the Professor be reprimanded.

The Associate Dean discussed the Complainant's requests with the Dean. She informed the Dean that based upon her review of the Policy, the Professor's actions on September 25, 2004 did not constitute sexual harassment, rather reflected classroom management. She further expressed her belief that the Complainant would be satisfied if the College allowed him to withdraw from TDE-638 and refund his full tuition. She advised the Dean that the Complainant was asking the College to reprimand the Professor. The Dean authorized the College to issue full tuition reimbursement to the Complainant and to allow the Complainant to drop the course without penalty.

On October 13, 2004, the Associate Dean informed the Complainant that the College would refund his full tuition for TDE 638 and allow him to withdraw from the course without penalty. The Complainant asked how the Professor would be sanctioned for her actions. The Associate Dean explained that the College had rules of confidentiality governing employees and referred him to the Dean.

On October 14, 2004, the Complainant telephoned the Dean. The Complainant focused the discussion on what disciplinary action the College would take against the Professor because she had humiliated him in front of his classmates. The Dean advised the Complainant that, if the Professor were disciplined, it would not be made known to the Complainant.

The Dean discussed the Complainant's October 1, 2004 report of sexual harassment with the Professor by telephone on or about October 14, 2004. The Professor recounted the

September 25, 2004 classroom incident. She stated she had lightly touched the Complainant on the shoulder to gain control of the classroom. The Dean advised the Professor to refrain from touching students. The Professor told OCR that she viewed the Dean's directive to be a verbal reprimand. The Dean did not view his statement as a reprimand or disciplinary action.

The Dean concurred with the Associate Dean in her conclusion that the Professor's actions during the September 25, 2004 incident did not constitute sexual harassment as defined by the Policy. The Dean based this on the recommendation of the Associate Dean and on his own discussions with the Professor and the Complainant. He concluded that since the College had refunded the Complainant's full tuition, allowed the Complainant to withdraw from the course without penalty, and encouraged the Complainant to continue in the degree program, the College had addressed the Complainant's concerns. The fact that he talked with the Professor was not part of his conclusion that the Complainant's concerns had been addressed.

On October 18, 2004, the Complainant telephoned the Vice President and explained that the Professor had massaged his shoulders during a classroom discussion, that he had consequently withdrawn from the course, and that he had received a full refund for the course. He continued that he viewed the Professor's letter of apology to be unsatisfactory and objected that the Dean would not inform him as to how the College was disciplining the Professor. In reply, the Vice President told the Complainant that the College's privacy policy would not allow the Complainant to see the Professor's personnel file.

According to the Vice President, the Associate Dean and the Dean informed her that they had both read the Complainant's report of sexual harassment and had talked to the Complainant. They had independently discussed the complaint with the Professor and concluded sexual harassment had not occurred. On October 25, 2004, the Vice President indicated to the Complainant that since he was dissatisfied with the College's treatment of his report of sexual harassment, he was entitled to file a grievance. The Vice President further advised the Complainant that he could find the College's grievance procedures in the Guide posted on the College's web site or write his concerns to her and she would address them as a grievance. The Complainant did not file a grievance.

During a May 26, 2005 interview by OCR, the Professor acknowledged that she touched the Complainant lightly three times on the shoulder blade at a pressure point during the September 25, 2004 class. She stated she did so to maintain order in the class and to prevent the Complainant from monopolizing the classroom discussion. Although the Professor denied that she stated to the Complainant: "Don't get your undies in a bind," she acknowledged that she told the Complainant that the area of his shoulder was pretty tight.

OCR interviewed five students in the Complainant's TDE-638 class who were present on September 25, 2004. The students confirmed that the Professor approached the Complainant and began massaging his shoulders. The students stated that the Professor massaged the Complainant's shoulder for about a minute. One student said that the Professor told the Complainant to not get his "undies" in a bind. Other students

interviewed said that the Professor told the Complainant that he was tight. None of the students considered the Professor's interaction with the Complainant to be sexual in nature. However, one student was embarrassed at witnessing the exchange.

According to the students, the Complainant reacted to the Professor's contact by shifting his body position and minimizing his participation for the rest of the class. The witnesses also told OCR that the Professor touched students other than the Complainant during the class. One witness said that the Professor gave her a touch of reassurance on her shoulder.

Relevant Statute and Regulation

The Title IX regulation, at 34 C.F.R. §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 educational program or activity operated by a recipient. Sexual harassment is unwelcome conduct of a sexual nature. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. Sexual harassment of a student can deny or limit, on the basis of sex, the student's ability to participate in or to receive benefits, services, or opportunities in the recipient's program. Sexual harassment of students can, therefore, constitute a form of sex discrimination prohibited by Title IX. OCR considers the totality of the circumstances to determine if a hostile environment has been created, i.e., if sexually harassing conduct is sufficiently serious that it denies or limits a student's ability to participate in or benefit from the recipient's program based on sex. OCR evaluates the severity and pervasiveness of the alleged conduct.

Once a recipient has notice of possible sexual harassment of students, it should take immediate and appropriate steps to investigate or otherwise determine what occurred and take prompt and effective steps reasonably calculated to end any harassment, eliminate a hostile environment if one has been created, and prevent harassment from occurring again.

Analysis

OCR reviewed the Complainant's correspondence with the College and interviewed the Complainant, the Professor, the Vice President, Dean and Associate Dean of the College, and five students in the Complainant's TDE 638 class to determine whether the Professor engaged in sexual harassment during the September 25, 2004 incident and how the College responded to the alleged harassment.

The evidence is clear that the Professor gave the Complainant a brief shoulder massage on September 25, 2004. The evidence further supports that, at that same time, the Professor commented about the Complainant being tense. The Professor may also have made a comment to the effect that the Complainant should not get his "undies" in a bind. The evidence further indicates that the female Professor's touching of the Complainant was unwelcome, in that the Complainant felt humiliated by the touching in front of his classmates and that the incident led to his withdrawing from the course. The Complainant

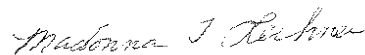
was the only male student in the course and viewed the touching as being of a sexual nature.

Based on the totality of the circumstances, however, OCR does not view the Professor's conduct to be sufficiently serious, severe or pervasive to deny or limit the ability of the Complainant to participate in or benefit from the College's program based on sex. The Professor's touching and comments to the Complainant were unwelcome and arguably inappropriate in light of the Professor's relationship to the Complainant. However, the Complainant was a graduate student at the time and the entire incident lasted about a minute and no further incidents took place. OCR therefore concludes that this conduct was not of the type, frequency or duration to constitute sexual harassment. OCR's conclusion that there was no sexual harassment is consistent with the results of the College's investigation of the alleged sexual harassment.

Following the Complainant's October 1st complaint of sexual harassment to the Dean and Associate Dean, the Associate Dean promptly conducted an investigation. The Associate Dean questioned the Complainant on or about October 5, 2004, and the Professor on October 8, 2004. Similarly, the Dean responded by discussing the complaint with the Complainant and the Professor on or about October 14, 2004. As noted, the College concluded that the Professor's actions did not constitute sexual harassment, but the Dean advised the Professor to refrain from touching students. In addition, the College refunded the Complainant's full tuition, allowed the Complainant to withdraw from the course without penalty, and encouraged the Complainant to continue in the degree program. Based on this information, OCR has determined that the College responded promptly and appropriately to the Complainant's complaint of sexual harassment. In accordance with the Guide, the College took immediate and appropriate steps to determine what occurred during the September 25, 2004 incident and took steps reasonably calculated to prevent harassment from recurring. OCR therefore concludes that there is insufficient evidence to substantiate the Complainant's allegation that the College failed to adequately address his report of employee-to-student sexual harassment.

Therefore, we are closing the complaint effective the date of this letter. OCR wishes to thank you and your staff, in particular, Ms. Sheryl Ayala, Vice President of Academic Affairs, for the cooperation and courtesy extended to OCR. If you have any questions regarding this letter, please contact Mr. Paul Houdek, Equal Opportunity Specialist, of my staff, at 312-886-8426.

Sincerely,



Madonna T. Lechner
Team Leader

cc: Ms. Sheryl Ayala, Vice President of Academic Affairs
Ms. Sarah Elliot, Attorney at Law