



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS
MIDWESTERN DIVISION, CHICAGO OFFICE

MAR 6 2007

Dr. Adam Herbert
President
Indiana University
107 S. Indiana Ave.
Bloomington, IN 47405-7000

Re: OCR Docket #05062138

Dear Dr. Herbert:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed against Indiana University-Bloomington (University), which alleged that the University failed to adequately address sexual harassment, specifically a sexual assault, of a student (Student A) in April 2006.

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, as amended, 20 U.S.C. § 1681 *et seq.*, and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination based upon sex in educational programs and activities that receive Federal financial assistance from the Department. Accordingly, OCR has jurisdiction over this complaint.

During the investigation, OCR interviewed University personnel, Student A and her parents, and reviewed documentation provided by Student A and the University. OCR has determined that there is insufficient evidence to establish a violation with regard to the allegation made in the complaint. The basis for this conclusion is set forth below.

Facts

The University provided OCR copies of two codes detailing student rights and responsibilities, one in place throughout the University system and one specific to the Bloomington campus. These codes are distributed when a student enrolls in the University and are also available on the University's website. The codes together specify the University's policies prohibiting abuse, harassment, and assault based on sex, define sexual harassment, detail the procedures students should follow to complain about personal misconduct by a student, including sexual harassment, delineate the University's judicial procedures, and list the possible sanctions that may be imposed if a violation is found. The codes state that if alleged personal misconduct involves sexual harassment or assault, the University will follow the student judicial process. The codes do not specify sanctions for particular violations, but list the range of sanctions available, from warnings to expulsion, and the behaviors prohibited by the code. According to the University,

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there have been eleven sexual assault cases, including the instant case, in the last two years. Three of the eleven cases, including this case, resulted in suspensions. One of the other two suspensions was for nine months and the other was for eight months. Both of these suspensions expired on December 31, 2006; however, neither of the suspended students has returned to the University. Five of the eleven cases resulted in students receiving lesser sanctions than suspension. The remaining three cases resulted in the University finding the accused student "Not Responsible" for the alleged misconduct.

The codes stipulate that a complaint alleging personal misconduct, including sexual harassment or sexual assault, may be filed by any person, but must be submitted in writing to the Dean of Students. The Dean of Students or his designee may then initiate a judicial proceeding against an accused student. The first step in this process is to schedule an informal conference to discuss the alleged offense, at which conference testimony is heard regarding the alleged offense. According to the codes, the accused student may have an advisor present at the conference.

Student A was enrolled as a freshman at the University during the 2005-06 school year and resided in a coeducational University residence hall. According to Student A, early in the morning on April 7, 2006, a male student (Student B), who resided in the same residence hall, sexually assaulted Student A. Student A asserted that she reported this sexual assault to the University and that the University did not respond promptly or appropriately to her complaint, in that she was not referred for medical attention, the University did not conduct a proper judicial conference, and Student B was not sufficiently disciplined for his actions.

On April 11, Student A reported the assault to a police officer (Officer) with the Indiana University Police Department (IUPD). The Officer stated to OCR that Student A informed him at this time that she did not want the Officer to take any action other than to maintain a record of the assault. The Officer stated that he provided Student A with a form entitled, "Sexual Assault Resource Tracker" (Resource Tracker) and explained its purpose. The Resource Tracker contains information to assist sexual assault victims, including telephone numbers for local law enforcement agencies, the University's counseling office and other offices serving students who are victims of sexual assault, the University's health center, and the University's Office of Student Ethics & Anti-Harassment Programs. The Officer stated that he strongly encouraged Student A to consider filing a complaint against Student B using the University's judicial process. Student A signed and dated the Resource Tracker on April 11 and indicated that the report was for information only and that she did not wish to initiate the student judicial process or a criminal investigation.

Student A confirmed to OCR that the Officer provided her with a copy of the Resource Tracker and discussed the content of the form. She further confirmed that she did not want to press criminal charges against Student B or pursue a complaint through the student judicial process at that time; however, she wanted the University to maintain a record of the incident.

On April 12, the Officer contacted Student B to get his account of the April 7 incident. According to the Officer, Student B indicated that the sexual contact with Student A was consensual. The Officer informed Student B that an investigation was in progress regarding this incident and that he should not have any contact with Student A, including by telephone or electronic mail. The Officer reported that Student B told him he had not contacted Student A since the incident and had no intention of contacting Student A. The Officer's report said he met again with Student A the same day and that she indicated that she may wish to have his report forwarded to the Office of the Dean of Students (Dean's Office), but she was not sure. Student A said that when she met with the Officer a few days after their first meeting, she authorized the Officer to send the report to the Dean's Office.

On April 16, Student A reported the incident to the Resident Assistant (Assistant) at her residence hall. On April 17, Student A and the Assistant met with the Residence Coordinator (Coordinator), the Assistant's supervisor. At this time, Student A wrote a statement making a complaint for submission to the Dean's Office. Later on April 17, the Coordinator served Student B an official "Administrative Order to Move" from the Residence Hall to a different location and the University relocated Student B to a different residence hall within 24 hours.

On April 18, the Officer submitted his report to the Office of Student Ethics and Anti-Harassment Programs (Ethics Office), within the Dean's Office. Because the incident involved assault, the Special Advocate within the Dean's Office (Special Advocate), who works exclusively with students who have been assaulted, was notified. The Special Advocate said she provides information about the University judicial process and answers questions from students.

By letter dated April 26, the Assistant Director of the Ethics Office (Assistant Director), notified Student B that he was being charged with sexual assault, sexual contact with another person without consent, and unauthorized use of alcohol in connection with the April 7 incident and another incident that had occurred in October 2005. The charges in the letter specified that on two separate occasions involving two different women, he entered the room of the woman and had a sexual encounter while the woman was visibly intoxicated and/or resisting him. According to the Officer, the female student allegedly victimized by Student B in October did not report the incident to the University, but sent an electronic mail message to Student A, who notified her parent, who in turn notified him. The Officer's report indicates that Student B had allegedly kissed this other student without permission on two occasions, but stopped when she told him to do so.

On April 27, the Special Advocate met with Student A and showed her a brief video that described the University's judicial process. Student A informed OCR that the video clearly explained the University's judicial process, including the hearing, who could be present, and the roles of the participants' advisors. The Special Advocate said she offered Student A counseling from a crisis provider at the University's Student Health Center, but Student A said she did not feel the need for University-sponsored counseling because she was consulting with her own personal psychologist by telephone. Student A

said the Special Advocate asked her if she had received counseling, and she told the Advocate that she had.

On May 4, the University conducted a judicial conference to determine whether Student B was responsible for the actions with which he was charged and, if so, to determine the appropriate disciplinary sanction. The Assistant Director and the Coordinator served as hearing officers at the conference. The Assistant Director was the Dean's designee, and the Residence Coordinator said she usually presides over disciplinary matters that involved residents of the hall she coordinates. Student B was in the room with the hearing officers, and Student A participated via conference call. The Special Advocate attended the judicial conference on behalf of Student A and Student B's father attended the judicial conference on behalf of Student B. The female student who was allegedly victimized by Student B in October did not attend the hearing. She had not shown up for her scheduled conference with the Special Advocate and also declined to attend this hearing because of a scheduling conflict.

Student A told OCR that she believed that the University did not follow its own internal procedures by allowing Student B's father to be present and to speak during the judicial conference. However, the hearing officers said they considered the testimony of Students A and B and their decision was based upon the students' statements and not that of others in the room. The hearing officers stated that the students' representatives were informed that their role during the conference was to be advisors. The Assistant Director stated to OCR that the judicial conference briefly became contentious when Student B's father directed questions and made statements to the hearing officers. The Assistant Director said that he told Student B's father that he should not be speaking on Student B's behalf.

As a result of the evidence and testimony presented by both parties, the hearing officers found Student B had sexual intercourse with Student A while she was intoxicated and that he should have known that she was intoxicated. According to the Residence Coordinator, they determined the charge of sexual assault was not founded, because the testimony conflicted and because both students were intoxicated, but Student B was found responsible for sexual contact without consent. In addition, the Assistant Director advised OCR that they did not find Student B responsible for the October incident, because the other student did not want to participate in the hearing.

The hearing officers recommended in an electronic mail dated May 4, 2006, to the Dean of Students and other University officials that Student B be suspended from the University through the summer of 2006, be required to seek treatment for alcohol/substance abuse and counseling on gender issues, and be prohibited from contacting Student A. The recommendation references as a mitigating factor the fact that Student B admitted he has an alcohol problem that "contributed significantly to some of his mistakes" during the school year. Student A was verbally informed of these recommendations. The Assistant Director said that when he informed her of this decision she expressed that Student B should receive a harsher punishment.

In a May 4 letter to the Dean of Students, Student A said she was disappointed with the recommendation to suspend Student B for such a short period of time. She indicated in the letter that she thought that Student B was a serious threat to women. She said the University "harbors rapists" and said, "I beg of you to change this," but did not specifically say what penalty she sought. Student A told OCR that she thought that Student B should be permanently expelled from campus. The Dean of Students told OCR that he did not believe a suspension for only the summer was sufficient, so he lengthened it to a year. He stated that in this case he talked to Student A's father and reviewed the record and decided that a harsher punishment was necessary.

By letter dated May 10, the hearing officers notified Student B that the University found him responsible for "exhibiting inappropriate sexual conduct with another student while both ... were intoxicated" and that he was being suspended for one year, through May 15, 2007. The letter did not mention the October incident involving the other student. Also, Student B was informed that if he was involved in any further acts of misconduct, additional charges and disciplinary sanctions including expulsion might be imposed. Student B was advised that he could appeal the sanction; according to the University, he did not do so. Student A told OCR she received an electronic mail from the Dean's Office notifying her that Student B was being suspended through the Spring of 2007.

Student A informed OCR that the April 7 incident had affected her academic performance. She told OCR that the previous semester was "really rough," including an F in one course, and that her spring semester grades before the incident were "not great," but were improving before April 7. She received one grade of "C+," three grades of "D" or "D+" and one "Incomplete" at the end of the spring 2006 semester.

The University informed OCR in fall 2006 that as a remedial act in response to the internal complaint filed by Student A and based on a request made through the Special Advocate's office, it had changed Student A's grade of "C+" to "B-" and the remaining grades to "W", which means that Student A had withdrawn from these courses. According to the University, the hearing officers in the judicial hearing were not involved in the decision to change Student A's grades, but it followed its procedures and solicited agreement from the professors of these courses and their department heads to change the grades. The University explained that these changes were "quite extraordinary," in that students are generally not permitted to "withdraw" from courses they have completed.

Student A informed OCR in summer 2006 that she will not be returning to the University. She stated that she wanted to be closer to home and that she felt discomfort at the thought of Student B returning to the campus.

Analysis and Conclusion

The Title IX implementing regulation, at 34 C.F.R. § 106.51(a), provides 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 education program or activity operated by a recipient receiving Federal financial assistance. Sexual harassment of a student can be discrimination

in violation of Title IX. Sexual harassment is unwelcome conduct of a sexual nature that denies or limits, on the basis of sex, the student's ability to participate in, or to receive benefits, services or opportunities in, the recipient's program.

Title IX requires that once a recipient has notice of possible sexual harassment of a student, the recipient should take immediate and appropriate steps to investigate or otherwise determine what occurred. If the recipient determines that sexual harassment occurred, it should 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. The corrective action taken should be timely, age-appropriate and tailored to the specific situation. A series of escalating steps may be necessary if the initial steps are ineffective in stopping the harassment.

The complaint alleged that the University failed to adequately address sexual harassment, specifically a sexual assault, of Student A by Student B in April 2006. The evidence revealed that the University, through its student judicial process, found that Student B had in fact exhibited "inappropriate sexual conduct" with Student A. OCR therefore examined whether the University took appropriate and timely action in response to the alleged harassment reported by Student A. Student A asserted that the University did not respond promptly or appropriately to her reported sexual assault in that she was not referred for medical attention, she believed that the University did not conduct a proper judicial conference, and she believed that Student B was not sufficiently disciplined for his actions.

The evidence revealed that Student A provided notice of the sexual harassment to a University Police Officer on April 11, but informed him that she did not wish to initiate the University's judicial process or a criminal investigation. Nevertheless, the Officer began an inquiry into the situation and warned Student B against any further contact with Student A. The evidence also revealed that approximately a week later, Student A provided notice of the sexual harassment to a residence hall official. Upon receiving this notice, the University immediately removed Student B from the residence hall where Student A resided. Student A filed a complaint of personal misconduct against Student B under the University's student judicial process in mid-April. Within a three-week time period after the filing, the University conducted judicial proceedings consistent with its internal procedures and found that Student B had exhibited "inappropriate sexual conduct" with Student A. Following the completion of the judicial process, the University suspended Student B from the University for the entire 2006-07 academic year and warned him that any further acts of misconduct could result in expulsion.

Student A complained to OCR that the judicial conference was not conducted in a proper manner because Student B's father was allowed to speak at the judicial conference. However, the evidence revealed that the conference was conducted in accordance with the University's written judicial procedures, which allow accused students to bring an advisor. Student A also believes the punishment was inadequate because she thought that Student B should have been expelled. The University considered the testimony of the students, the nature of the alleged conduct, and Student B's response in the hearing in determining that

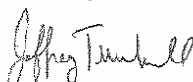
the punishment was appropriate. The punishment was more severe than in other cases of sexual assault at the University, and the University reasonably believed the punishment and warning against further misconduct were sufficient to prevent further harassment.

In addition, the evidence revealed that the University took steps to address the effects of the sexual harassment on Student A. While Student A asserted to OCR that she believed the University should have referred her for medical attention when she reported the sexual assault, the Resource Tracker that the Police Officer provided her on April 11 contained contact information for the University's health service. Student A advised OCR that she suffered emotional and academic effects from the sexual harassment. In order to address the emotional effects, the University was prepared to offer Student A University-sponsored counseling, but Student A advised the University that she had received counseling from her personal psychologist. In addition, to address the academic effects of the sexual harassment, the University changed all of Student A's grades for the spring 2006 semester.

Based on the above, OCR concluded that the University acted promptly and appropriately upon receiving notice of sexual harassment of Student A, by warning Student B against further conduct with Student A, promptly removing him from the residence hall where Student A lived, initiating its judicial process, suspending him for a year from the University, and warning him that further acts of misconduct could result in expulsion. The University also took several actions to address the emotional and academic effects on Student A. Although Student A did not agree with the severity of the punishment given to Student B, OCR determined that the University's actions were reasonably calculated to prevent any recurrence of the harassment.

OCR has determined that there is insufficient evidence to conclude that the University subjected Student A to discrimination based on sex as alleged. This concludes OCR's consideration of this complaint. We wish to thank you and your staff, especially Mr. Michael Klein, Attorney, for the cooperation extended to OCR during our complaint resolution activities. If you have any questions, please call Mr. Larry May, Equal Opportunity Specialist, or me at (312) 730-1594.

Sincerely,


Jeffrey Turnbull
Team Leader

cc: (b)(7)(C)