



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION I

5 POST OFFICE SQUARE, 8TH FLOOR
BOSTON, MASSACHUSETTS 02109-3921

APR 30 2013

President Anthony P. Monaco
Office of the President
Tufts University
Ballou Hall, 2nd Floor
Medford, Massachusetts 02155

Re: Complaint No. 01-09-2070

Dear President Monaco:

This letter is to inform you that the U.S. Department of Education, Office for Civil Rights (OCR) is closing the above-referenced complaint that a female student (Complainant) filed against Tufts University (University), alleging discrimination on the basis of sex. As explained below, OCR determined that there is insufficient evidence to establish that the University discriminated against the Complainant, as she alleged in her complaint.

OCR accepted this complaint because the allegations fall under the jurisdiction of Title IX of the Education Amendments of 1972 and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in programs or activities that receive Federal financial assistance. The University is subject to the requirements of Title IX because it operates programs and activities that receive Federal financial assistance from the U.S. Department of Education.

OCR investigated the following issue:

- Whether the University failed to respond promptly and effectively to notice of possible sexual discrimination, including sexual harassment, in violation of 34 C.F.R. Sections 106.8 and 106.31.

During the course of our investigation, OCR interviewed the Complainant and reviewed information she provided. OCR also reviewed the University's data response, which included a copy of the Complainant's education records, University policies and procedures, and copies of email and other written correspondence between the Complainant and University staff.

Legal Standard

The Title IX regulation provides that no person shall, on the basis of sex, be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination by a recipient of Federal financial assistance in any of its programs or activities. The sexual harassment, including sexual assault, of one student by another student that creates a hostile environment is a

form of sex discrimination under Title IX. A hostile environment can be created when conduct of a sexual nature, which can include unwelcome sexual advances and other verbal, non-verbal, or physical conduct of a sexual nature, is sufficiently severe, pervasive or persistent to interfere with a student's ability to participate in or benefit from an education program or activity or to create a hostile or abusive educational environment.

Once a recipient has notice that sexual harassment may be occurring in its programs, it is obligated to take immediate and appropriate steps to investigate or otherwise determine what occurred and to take prompt and effective steps reasonably calculated to end any harassment, eliminate a hostile environment, prevent harassment from occurring again, and, as appropriate, remedy its effects.

The regulation implementing Title IX at 34 C.F.R. Section 106.8(b) also requires that recipients establish policies and procedures providing for prompt and equitable resolution of complaints alleging violation of Title IX, including complaints of sexual harassment. OCR considers a number of factors in evaluating whether a recipient's grievance procedures are prompt and equitable, including whether the procedures provide for the following: 1) notice of the procedures to students and employees, including where to file complaints; 2) application of the procedures to complaints alleging discrimination on the basis of sex, including sexual harassment by employees, students, or third parties; 3) adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence; 4) designated and reasonably prompt timeframes for major stages of the complaint process; 5) notice to the parties of the outcome of the complaint; and 6) an assurance that reasonable steps will be taken to prevent recurrence of any harassment and to correct its discriminatory effects.

OCR considers the above factors collectively when assessing a recipient's grievance procedures under Title IX, or assessing whether a recipient's response to a specific complaint, or other notice, of sexual harassment is both prompt and equitable. Thus, recipients are generally found to comply with Title IX when they provide proper notice of their complaint procedures, and respond to harassment complaints by conducting thorough and objective investigations and by taking prompt and effective action to stop any sexual harassment, prevent it from recurring, and remedy any discriminatory effects. It is also important to note that under Title IX, a recipient must take similarly responsive steps (i.e., to stop the harassment, prevent its recurrence, and remedy the effects on victims) once it has notice of possible sexual harassment of students by employees, other students, or third parties. A recipient has that responsibility regardless of whether the student who was harassed files a grievance, otherwise asks the school to take action, or refuses to participate in the recipient's investigation. In short, Title IX requires a recipient to take prompt and effective corrective action if it knows or reasonably should know of the existence of a sexually hostile environment.

Finally, Title IX does not require that a recipient provide separate grievance procedures for sexual harassment or other complaints under Title IX, permitting (for example) the use of a student disciplinary procedure to resolve sex discrimination complaints, as long as the procedure meets the requirement of affording a complainant a "prompt and equitable" resolution of the complaint. In other words, a recipient that utilizes its student disciplinary process to respond to a Title IX complaint, or other notice of a possible Title IX violation, must ensure that the process addresses the

requirements of Title IX. Thus, if a recipient uses a student disciplinary process in response to a sexual harassment allegation, and if the disciplinary process does not determine whether sexual harassment occurred consistent with the requirements of Title IX, the recipient must make that determination and remedy fully and appropriately any harassment that it determines to have occurred.

Summary of Facts

The Complainant enrolled in the University during the (b)(6); (b)(7)(C). OCR found that in (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) she was required to withdraw due to academic difficulties, and over the next three years, she was put on academic probation and periodically asked to withdraw for one to two semesters at a time due to continuing academic difficulties. A review of email correspondence provided in the University's data response revealed that the Complainant was involved in a relationship with another student (Student) at the University during her time there and both she and the Student had taken out stay-away orders and restraining orders, with police involvement, against each other during the same time period.

On (b)(6); (b)(7)(C) during a semester in which the Complainant was not enrolled at the University, she filed a complaint against the Student within the University Judicial System, alleging two incidents of sexual assault: one dating back to (b)(6); (b)(7)(C) and the other dating back to (b)(6); (b)(7)(C). The University Judicial Officer provided a copy of the complaint to the Student on (b)(6); (b)(7)(C) and informed the Complainant she was doing so. On (b)(6); (b)(7)(C) the Student informed the Judicial Officer and the Dean that he was denying the charges and invoking the statute of limitations as described in the Judicial Code handbook. The Judicial Officer then informed the Complainant that the University might not be able to proceed with an investigation of her complaint due to the untimeliness of her allegations and the fact that the Student had invoked the statute of limitations on the allegations of sexual assault. The Judicial Officer informed the Complainant that once University Counsel had been consulted on the issue, she would let the Complainant know the outcome.

The Judicial Officer subsequently informed the Student on (b)(6); (b)(7)(C) that the University was dismissing the sexual assault charges due to the statute of limitations. The Judicial Officer informed the Complainant of the same on (b)(6); (b)(7)(C). In (b)(6); (b)(7)(C) the Student (b)(6); (b)(7)(C)

The Complainant was not enrolled during the (b)(6); (b)(7)(C) but returned to the University for the (b)(6); (b)(7)(C) semester and continued to experience academic difficulties. Then, in (b)(6); (b)(7)(C) the Complainant was notified that she was being permanently academically withdrawn from the University. The Complainant appealed the decision, but it was denied.

Discussion and Analysis

OCR's investigation focused on the (b)(6); (b)(7)(C), and whether the Complainant raised concerns regarding the University's alleged failure to appropriately respond to her (b)(6); (b)(7)(C) complaint and that she was encountering academic difficulties as a consequence, and whether that would trigger a further obligation to respond. While the Complainant informed OCR that she brought her concerns of sexual assault forward to the University again in the (b)(6); (b)(7)(C)

and they continued to “do nothing” about her complaint, OCR did not find sufficient evidence to support this account. Although the Complainant informed one of her professors and an associate academic dean, who had provided her academic assistance in the past, that she was having a difficult time and made reference to her prior experience with the Student, OCR did not find any indication that the Complainant raised concerns regarding the University’s handling of her (b)(6); sexual assault complaint after returning to the University in the (b)(6); (b)(7)(C). In a follow-up conversation with OCR staff, the Complainant acknowledged that she had not pursued the matter further and stated she did not see the point of raising the University’s prior response since the Student had graduated.

OCR also noted that in the Complainant’s (b)(6); (b)(7)(C) appeal of her involuntary withdrawal from the University, she did not raise concerns regarding the University’s resolution of her prior complaint, and instead requested accommodations under Title IX as a victim of a sexual assault. The University informed the Complainant that it reviewed her request and determined that she had not provided timely and adequate information prior to her appeal that would have allowed the University to address any concerns during the relevant timeframe; thus, the University denied the Complainant’s appeal. Moreover, although the Complainant requested accommodations in her appeal, she did not mention that she had requested any accommodations prior to that time. OCR was unable to establish that the Complainant raised concerns during (b)(6); (b)(7)(C) (b)(6); to which the University would have been obligated to respond under Title IX: the University had already responded to her (b)(6); sexual assault complaint and she did not make any complaint of sex discrimination in (b)(6);. Accordingly, OCR concluded that there is insufficient evidence to conclude that the University discriminated against the Complainant in (b)(6); (b)(7)(C) as alleged.

Conclusion

After careful consideration of all of the information presented in this case, OCR has determined that there is insufficient evidence to conclude that the University failed to respond to the Complainant’s reported concerns, as alleged. Accordingly, OCR is closing this complaint, effective the date of this letter.

This letter is a letter of findings issued by OCR to address an individual OCR case, and should not be construed to cover any other compliance issues with Title IX that may exist but are not discussed above. Letters of findings contain fact-specific investigative findings and dispositions of individual cases. Letters of findings are not formal statements of OCR policy and they should not be relied upon, cited, or construed as such. OCR’s formal policy statements are approved by a duly authorized OCR official and made available to the public. Please also be advised that the Complainant may have the right to file a private suit in Federal court on this issue, whether or not OCR found a violation.

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 all personal information to the extent provided by law that, if released, could constitute an unwarranted invasion of privacy.

We thank you and your staff for your cooperation during this investigation. If you have any questions regarding this letter, you may contact Mr. Anthony Cruthird, Civil Rights Attorney, at (617) 289-0037 or by email at Anthony.Cruthird@ed.gov. If you have further questions, you may contact me directly at (617) 289-0019.

Sincerely,

(b)(6); (b)(7)(C)

Donna L. Russell
Team Leader/Civil Rights Attorney

Cc: (b)(6)