



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS—REGION VI

August 17, 2011

(b)(7)(C)

Reference: 06112126

Dear (b)(7)(C)

The U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, has completed its evaluation of your complaint against Southern Methodist University (SMU), Dallas, TX, which was received in our office on June 2, 2011. In the complaint, you alleged that SMU discriminated against you on the bases of race/national origin and sex/gender. You also alleged that SMU retaliated against you. Specifically, you alleged that SMU:

1. Discriminated against you on the basis of sex/gender during the (b)(7)(C) (b)(7)(C) semester, when SMU failed to take prompt and effective action to address sex/gender based harassment by an SMU (b) professor (i.e., the professor referred to you as a “doody blonde,” a “beauty queen,” and a “hired bimbo” and stated that you were acting “bitchy” during a classroom lecture), which was sufficient to constitute a hostile environment, of which SMU had or should have had notice;
2. Discriminated against you on the basis of race/national origin when you were subjected to harassment (based on race/national origin) by an SMU (b) professor throughout the (b)(7)(C) (b)(7)(C) semester (i.e., the professor made disparaging and inappropriate comments about you and another (b)(7)(C) female student, such as accusing you of having other students doing your work and calling the other (b)(7)(C) student “lazy,” a “user,” and a “big mistake”);
3. Discriminated against you on the basis of sex/gender when you were subjected to harassment (based on sex/gender) by an SMU (b) professor during a grievance hearing in (b)(7)(C) (b)(7)(C) (i.e., the professor repeated several of the inappropriate remarks that (b) made during the (b)(7)(C) 2010 semester and made other “sexist” comments);
4. Discriminated against you on the basis of race/national origin when you were subjected to harassment (based on race/national origin) by an SMU (b) professor during a grievance hearing in (b)(7)(C) (b)(7)(C) (i.e., the professor repeated several of the inappropriate remarks that (b) made during the (b)(7)(C) semester and accused another (b)(7)(C) student of “drugging other students and bragging about it”); and

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5. Retaliated against you in (b)(7)(C) (b)(7)(C) by giving you the lowest grade in the (b)(7)(C) because an SMU law professor has a problem with “pretty (b)(7)(C) females who dress nicely.”

OCR is responsible for determining whether organizations or entities that receive or benefit from Federal financial assistance, either from the Department or an agency that has delegated investigative authority to the Department, are in compliance with Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d, and its implementing regulations at 34 C.F.R. Part 100, which prohibit discrimination on the grounds of race, color, and national origin. Title VI provides in part:

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Individuals filing a complaint, participating in an investigation, or asserting a right under Title VI are protected from intimidation or retaliation by 34 C.F.R. § 100.7(e), which provides in part:

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 [Title VI], or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under this part.

OCR is also responsible for determining whether organizations or entities that receive or benefit from Federal financial assistance, either from the Department or an agency that has delegated investigative authority to the Department, are in compliance with Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681 *et seq.*, and its implementing regulations at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex. Title IX provides in relevant part:

No person in the United States 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 receiving Federal financial assistance

Individuals filing a complaint, participating in an investigation, or asserting a right under Title IX are protected from intimidation or retaliation by 34 C.F.R. § 106.71, which incorporates 34 C.F.R. § 100.7(e).

SMU is a recipient of Federal financial assistance from the Department. Therefore, OCR has jurisdiction to process this complaint for resolution under Title VI and IX.

Because OCR has determined that it has jurisdiction and that the complaint was filed timely, it is opening allegation one for an investigation. Please note that opening an investigation pertaining to this allegation in no way implies that OCR has made a determination with regard to its merit. During the investigation, OCR is a neutral fact-finder, collecting and analyzing relevant evidence from the complainant, the recipient, and other sources, as appropriate. OCR will ensure that its investigation is legally sufficient and is dispositive of the allegation, in accordance with the provisions of Article III of OCR's *Case Processing Manual* (CPM).

Based on your allegation, OCR will investigate the following issue:

Whether, during the (b)(7)(C) (b)(7)(C) semester, SMU discriminated against you on the basis of sex/gender by failing to take prompt and effective action to address the sex/gender based harassment directed toward you (i.e., an SMU professor referred to you as a "doody blonde," a "beauty queen," and a "hired bimbo" and stated that you were acting "bitchy" during a classroom lecture), which was sufficient to constitute a hostile environment, of which SMU had or should have had notice, in violation of Title IX, at 34 C.F.R. § 106.31.

Please note that OCR's case resolution processes include Early Complaint Resolution (ECR). ECR allows the parties (the complainant and the institution that is the subject of the complaint) an opportunity to resolve the complaint allegations quickly; generally, soon after the complaint has been opened for investigation although ECR may take place at any time during the investigative process. If both parties are willing to try this approach, and if OCR determines that ECR is appropriate, OCR will facilitate settlement discussions between the parties and work with the parties to help them understand the legal standards and possible remedies. Please let OCR know if you are interested in the ECR process.

Regarding allegation two you alleged that, during the (b)(7)(C) (b)(7)(C) semester, you were subjected to race/national origin based harassment by an SMU (b)(7)(C) professor when the professor made disparaging and inappropriate comments about you and another (b)(7)(C) (b)(7)(C) student. Specifically, you alleged that the professor accused you of having other students doing your work and called the other (b)(7)(C) student "lazy," a "user," and a "big mistake". During a telephone conference on (b)(7)(C) (b)(7)(C) (Telephone Conference), OCR advised you that Section 106 of OCR's CPM provides that OCR will take action only with respect to those complaint allegations that have been filed with OCR within 180 calendar days of the date of the last act of alleged discrimination, unless the complainant is granted a waiver under Section 107. At that time, you requested a waiver of the 180-day filing requirement for this allegation. You informed OCR that you filed an internal grievance with SMU in (b)(7)(C) (b)(7)(C) alleging sex based harassment; however, you did not allege race/national origin based harassment. You stated that you did not pursue an internal grievance alleging race/national origin based harassment because, to your knowledge, SMU did not have policies/procedures to resolve discrimination complaints based on race/national origin.

Section 107 of the CPM provides that the Office Director, or designee, may grant a waiver of the 180-day filing requirement for good cause shown, such as under any of the following circumstances: (a) the complainant could not reasonably be expected to know that the act was discriminatory and the complaint allegation was filed within 60 days after the complainant became aware of the alleged discrimination; (b) the complainant was unable to file a complaint due to an incapacitating illness or other incapacitating circumstances during the 180-day period, and the complaint allegation was filed within 60 days after the period of incapacitation ended; (c) the complainant filed a complaint alleging the same discriminatory conduct within the 180-day period with another Federal, state, or local civil rights enforcement agency, or Federal or state court, and filed a complaint with OCR within 60 days after the other agency had completed its investigation or, in the case of a court, reached a determination, or the agency or court notified the complainant that it would take no further action; (d) the complainant filed, within the 180-day period, an internal grievance, or a due process hearing, alleging the same discriminatory conduct that is the subject of the OCR complaint, and the complaint is filed no later than 60 days after the internal grievance was concluded; or (e) unique circumstances generated by OCR's action have adversely affected the complainant.

As noted above, CPM Section 107(d) may be appropriate when a complainant has filed, within the 180-day period, an internal grievance with a recipient of Federal financial assistance, or a due process hearing, alleging the same discriminatory conduct that is the subject of the OCR complaint, and the complaint is filed no later than 60 days after the internal grievance is concluded. In the subject case, you informed OCR that you did not file an internal grievance with SMU with regard to this allegation; therefore, CPM Section 107(d) does not apply. OCR has further determined that none of the other grounds for a waiver apply to this allegation; thus, your request for a waiver of the 180-day filing requirement is denied. Accordingly, OCR will dismiss this allegation as untimely.

In allegations three-five, you also alleged that you were subjected to discrimination on the bases of sex/gender and race/national origin, during a grievance hearing that was held in (b)(7)(C), when an SMU professor repeated several of the inappropriate remarks that (b) made during the (b)(7)(C) semester, made various "sexist" comments, and accused another (b)(7)(C) student of "drugging other students and bragging about it". You further alleged that you were retaliated against in (b)(7)(C), when the same SMU (b)(7)(C) professor retaliated against you by giving you the lowest grade in the (b)(7)(C) (b)(7) because the professor has a problem with "pretty (b)(7)(C) who dress nicely."

On (b)(7)(C) (b)(7)(C), OCR sent you a letter requesting additional information regarding these allegations. The letter informed you that the information provided in your complaint and during the Telephone Conference was not sufficiently detailed for OCR to infer that discrimination or retaliation may have occurred. You were advised that if OCR did not receive the requested information by August 3, 2011, these allegations would be dismissed. As of the date of this letter, you have not provided OCR with any information in response to our request. Thus, OCR has determined that these allegations lack

sufficient detail for OCR to infer that discrimination or retaliation may have occurred. Accordingly, OCR will not proceed further with these allegations.


This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and 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. You may have the right to file a private suit in Federal court whether or not OCR finds a violation.

Under OCR procedures, OCR is obligated to advise the complainant and the institution against which a complaint is filed that intimidation or retaliation against any individual is prohibited by regulations enforced by this agency. Specifically, the regulations enforced by OCR, directly or by reference, state 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 regulations enforced by OCR or because one has made a complaint, testified, assisted or participated in any manner in an investigation, proceeding or hearing held in connection with a complaint.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives 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 personal privacy.

OCR is committed to prompt and effective service. We will communicate with you periodically regarding the status of your complaint. If you have any questions, you may contact Mr. Gregory McGhee, the attorney assigned to your complaint, at (b)(7)(C) or via email at (b)(7)(C). You may also contact me at (b)(7)(C).

Sincerely,



Adriane P. Martin
Supervisory Attorney/Team Leader