



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS
CHICAGO OFFICE

OCT 10 2008

Dr. Richard D. Ringeisen
Chancellor
University of Illinois at Springfield
One University Plaza
Springfield, Illinois 62703

Re: OCR #05082111

Dear Dr. Ringeisen:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed against the University of Illinois at Springfield (University). The complaint alleged that the University subjected a graduate student (Student A) to retaliation for complaining of sexual harassment in 2001, in that it failed to respond to an internal complaint she filed with the University in November 2007 alleging breach of contract.

OCR enforces Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681, and its implementing regulation at 34 C.F.R. Part 106. Title IX prohibits discrimination on the basis of sex in education programs and activities receiving Federal financial assistance and also prohibits retaliation. As a recipient of Federal financial assistance from the Department, the University is subject to the provisions of Title IX.

In making its determination, OCR reviewed documentation submitted by Student A and the University and interviewed Student A and University staff. Based on its investigation, OCR has determined that the evidence is insufficient to establish that the University violated Title IX with regard to the allegation made in this complaint. The bases for OCR's conclusion are set forth below.

Legal Standard

The regulation implementing Title VI of the Civil Rights Act of 1964, at 34 C.F.R. § 100.7(e), which is incorporated by reference into the Title IX regulation, at 34 C.F.R. § 106.71, prohibits a recipient from intimidating or retaliating against an individual for the purpose of interfering with any right or privilege secured by the Act.

A *prima facie* case of retaliation is established when it is determined that (1) an individual engaged in a protected activity (opposed a discriminatory policy, asserted protected rights, or participated in an OCR complaint or proceeding); (2) the recipient knew of this activity; (3) the recipient took an adverse action contemporaneous with or

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subsequent to the protected activity; and (4) there is an inferable causal connection between the protected activity and the adverse action. If all of the elements of a *prima facie* case of retaliation are met, OCR then considers whether the recipient presented a legitimate, non-retaliatory justification for taking the adverse action, and whether the reason is a pretext for retaliation.

In determining whether there is an inferable causal connection between the protected activity and the adverse action, OCR considers the temporal proximity of the protected activity to the adverse action and any other evidence suggesting that the recipient took the adverse action because of the protected activity.

Facts

Student A enrolled in the University's graduate program in English in 1999, seeking a Masters degree. Student A stated that an English professor made sexual advances towards her between 1999 and 2001 and she reported these actions to her thesis advisor and to the University's "Office of Civil Rights." The University provided OCR a copy of an e-mail message dated May 8, 2000, from the Associate Chancellor for Access and Equal Opportunity to Student A advising Student A that she could file a sexual harassment grievance. Student A admits that she did not file a grievance. She also did not file a complaint with OCR.

Student A subsequently moved out of the area, but continued to work on her thesis in an effort to obtain her degree. She said she encountered several delays from faculty members over the years as she attempted to work with them to complete her thesis; therefore, on November 9, 2007, Student A filed a grievance with the University alleging a breach of contract because she had not been granted a degree. The grievance did not mention the alleged sexual harassment or her contacts with the University about it. The University did not respond to her breach of contract grievance.

The University told OCR that the University's Assistant Dean of Students (Assistant Dean) is the administrator primarily responsible for receiving and processing student grievances. He received Student A's grievance on November 14, 2007. He told OCR that he had received an e-mail message from Student A in spring 2007 asking for a grievance form, but he said he did not know her previously and had not heard about her report of sexual harassment. The Assistant Dean advised OCR that at the time he received the grievance, he had a very heavy workload, so he set it aside and then inadvertently misplaced it. He said he normally contacts the parties quickly upon receipt of a grievance to ascertain whether an informal resolution can be reached and then, if an informal resolution cannot be reached, appoints a committee to hear the grievance. He said he failed to do so in this case, as the grievance became mixed in with other papers and he did not remember that he had it. The Assistant Dean indicated that Student A did not contact him after she filed the grievance in November 2007 and that the next contact regarding the internal grievance was through the University Counsel's notice to him of the OCR complaint. He said he located the grievance in his office and began processing

it in summer 2008; he named a committee to look into the grievance when school began in fall 2008. The grievance is pending.

Student A stated that she believes the University's actions were retaliatory because she thinks the Assistant Dean spoke with English department personnel, although she had no specific information that this had occurred. The Assistant Dean denied that he had spoken with English department personnel about Student A and stated that he did not have any knowledge of a sexual harassment complaint by Student A when he received the internal grievance.

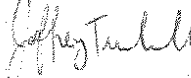
Analysis and Conclusion

The evidence established that Student A engaged in a protected activity when she advised the University in 2000 or 2001 that Professor A had sexually harassed her. The evidence also revealed that the University failed to process Student A's breach of contract grievance filed in 2007, which was an adverse action.

However, the evidence did not indicate that there was an inferable causal connection between the protected activity and the adverse action. There was at least a six-year lapse in time between Student A's contact with the University about possible sexual harassment and the breach of contract grievance. In addition, there was no other information suggesting that the University took the action because Student A had engaged in a protected activity. The Assistant Dean who failed to process the grievance when it was filed was unaware of Student A's earlier protected activity, and there was nothing in the content of the grievance that connected it with the alleged sexual harassment of Student A several years before or with the Assistant Dean. Accordingly, OCR found no other evidence of a retaliatory motive on the part of the University. As OCR could not establish a *prima facie* case of retaliation against Student A by the University in response to a complaint of sexual harassment, OCR has concluded that there is insufficient evidence that the University subjected Student A to retaliation when it failed to respond to the grievance she filed in November 2007.

Based on the above, OCR determined that there is insufficient evidence to establish a violation of Title IX and is closing this case as of the date of this letter. We wish to thank you and your staff for the cooperation and courtesy extended to OCR during this case. In particular, we wish to thank Mr. Mark Henss, University Counsel. If you have any questions regarding this matter, please contact Larry May at (312) 730-1594.

Sincerely,



Jeffrey Turnbull
Team Leader

cc: Mr. Mark Henss