



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS  
MIDWESTERN DIVISION, CHICAGO OFFICE  
111 NORTH CANAL STREET, SUITE 1053  
CHICAGO, ILLINOIS 60606-7204

OFFICE OF THE  
DIRECTOR

JAN 21 2000

Father Jack Minogue  
President  
DePaul University  
1 East Jackson Boulevard  
Chicago, Illinois 60604

Re: 05-99-2050

Dear Father Minogue:

This letter is to notify you of the disposition of the above-referenced complaint filed on March 17, 1999, with the U.S. Department of Education, Office for Civil Rights (OCR), against DePaul University (University). The complainant alleged that he was subjected to discrimination on the basis of his disability and age when the University denied him admission to the graduate Master's Degree Program in Integrated Professional Studies in March 1999. The complainant also alleged that during the course of the admission process, a University employee sexually harassed him.

The University is a recipient of Federal financial assistance from the Department of Education and, therefore, covered by the provisions of Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, and the Age Discrimination Act of 1975. These regulations prohibit discrimination on the bases of disability and age, respectively, in programs and activities that receive Federal financial assistance from the Department of Education. Accordingly, OCR has jurisdiction to review the allegation that the University discriminated against the complainant by denying him admission on the bases of disability and age to its graduate program. In addition, Title IX of the Education Amendments of 1972 prohibits sexual harassment in programs and activities that receive Federal financial assistance from the Department of Education. Thus, OCR also has the authority to investigate the sexual harassment allegation raised in this complaint.

In making a determination in this complaint, OCR reviewed documentary evidence provided by both the complainant and the University and conducted interviews with the complainant and University staff. A summary of the pertinent facts is set forth below.

Facts

- On February 1, 1999, the complainant submitted an application for admission to the University's MA Program in Integrated Professional Studies. The graduate program is designed for experienced professionals who are seeking to enhance their personal and professional effectiveness in areas not well served by existing graduate programs. The complainant maintains that on his application, he indicated his date of birth, which showed that he was age 40 at the time of the submission of the application, and that he had been diagnosed as having a mental impairment. The complainant was seeking enrollment to the program for the spring 1999 term.
- According to the Program Manual, admission to the program for the spring 1999 term required submission of an application and a twenty-five dollar application fee. As part of the admission process, applicants were required to submit an essay that included: (1) an explanation of the applicant's interest in pursuing study in this program rather than others considered; (2) an explanation of the focus area the applicant would like to pursue; (3) an explanation of the work experience or background the applicant brings to this focus area; and (4) a description of the setting (work or otherwise) in which the applicant will apply learning from the program. An official transcript documenting all prior college coursework was also required.
- Sometime between February 1 and February 10, 1999, the complainant telephoned the University and spoke to the Coordinator of the Master's Program to learn of the status of his application to the University. As stated by the complainant, the Coordinator was unable to read his handwritten application for admission and requested that the complainant re-submit the application as quickly as possible. By letter dated February 10, 1999, the Coordinator requested that the complainant update his application essay, as it was incomplete. The complainant was advised that his application was incomplete because it did not include an explanation of his; 1) interest in pursuing study in the program rather than others he considered; 2) experience or background that he would bring to the Focus Area; and 3) new areas of learning which he would like to explore in relation to his Focus Area. The complainant was advised that the University had not received his official undergraduate transcripts. The complainant was advised that the University must receive the additional information to complete his application by March 15, 1999.
- On February 12, 1999, the complainant re-submitted the application for admission to the University. When he telephoned the University on February 13, 1999, the Coordinator told the complainant that the application was being reviewed. During this, or one of his other telephone calls, the complainant alleged that the female Coordinator of the graduate program engaged in sexual harassment by telling him that she had "a beautiful body."

- The complainant maintains that during another telephone conversation, the Director of Graduate Admissions asked him why he wished to pursue a graduate studies program at his age and asked him to explain his mental disability in more detail. The complainant believed that he was discriminated against by the derogatory and negative manner in which this inquiry into his age and mental disability status occurred. The Director, however, denies that he ever spoke to the complainant. A review of the only available written documentation, the University's log of twenty-three calls made by the complainant to the University, did not show that the Director spoke with the complainant. Additionally, in the complainant's first application essay, he requested a waiver of the application fee. In this request, the complainant referenced that he had one physical disability that was controlled by medication. He further indicated that he had a surgically corrected spinal condition. OCR's in depth review of the complainant's application for admission found no references to his mental disability, but, instead, found the above-mentioned list of a number of physical disabilities.
- On February 24, 1999, the University notified the complainant by mail that his admission to the graduate program was denied. In the letter, the University gave the following three reasons for the denial of the application for admission:
  1. [The complainant's] undergraduate academic record does not indicate sufficient strength to support the particular demands of an individualized, self-managed graduate program;
  2. [The complainant's] application essay does not show evidence of graduate-level writing skills; and
  3. [The complainant did] not provide evidence of the required 3 years of professional experience (or its equivalent). Such evidence might include copies of published investigative reports or a resume describing related work experience.

### Analysis

In this case, the University has clearly defined written requirements for admission to the Master's Degree Program in Integrated Professional Studies. These requirements allow the University to assess the skills, abilities, attitudes and motivations deemed critical to an applicant's successful completion of the program. Among these requirements is that all applicants must submit an essay that shows the professional experience and background that the applicant brings to the program. There are no written policies prohibiting or limiting admission to the program on the basis of age or disability.

The Admissions Committee determines whether applicants have met the admission requirements and it looks to see whether the applicant has at least three years of experience or its equivalent relevant to the proposed focus area.

The complainant did not have the necessary three years of experience or its equivalent. In addition, the complainant was allowed to re-submit his essay after being notified that it did not meet the criteria for admission to the program. The second submission of the essay did not in the judgement of the admission committee demonstrate that the complainant met the admission criteria. The complainant was told of three reasons why he did not qualify for admission to the program. During the course of the investigation the complainant admitted that he did not have three years of professional experience, but felt that his life experience should be considered. OCR found no other applicant who failed to meet the criteria for admission.

#### **Age Discrimination**

The Age Discrimination Act of 1975, 34 C.F.R. 110.1 prohibits discrimination on the bases of age in programs and activities that receive Federal financial assistance from the Department of Education. At the time of his application the complainant was 40 years old. OCR examined the records of all applicants for the spring 1999 semester to determine if there were any candidates who may have been as old or older than the complainant. If an individual is an older or the oldest applicant, this may be an indication that discrimination could have occurred. However, the University indicated that the program tries to target more mature or adult students. OCR found that twenty-two applicants, including the complainant, sought admission to the graduate program. Twenty of these applicants were subsequently admitted to the program. One applicant, age 42, withdrew her application. Fourteen of the admitted twenty applicants (70%) were 40 years of age and older with the oldest applicant being age 59. Given that 70% of the applicants were as old or older than the complainant, OCR has determined that the evidence is insufficient to support a finding that the University discriminated against the complainant because of his age.

#### **Discrimination on the Basis of Disability**

Under the implementing regulations of Section 504 at 34 C.F.R.104.4 (a) and Title II of the ADA at 28 C.F.R. 35.160, no qualified disabled person shall on the basis of disability be denied the benefits of, or otherwise be subjected to discrimination under any program or activity, which receives or benefits from Federal financial assistance.

The complainant alleged that he was discriminated against on the basis of his mental disability. OCR's review of all other applicants' files indicated that there was no information available on the disability status of the other candidates. Thus, the complainant was the only applicant who indicated that he had a disability. The University staff denied that it discriminated against the complainant on the basis of disability indicated that it had never discussed any disability with the complainant and had no knowledge of his mental condition. The written University log does not indicate that the complainant spoke with the

Director, the individual who allegedly made the discriminatory remarks. In addition, although the evidence shows that the complainant listed some *physical disabilities* in his application essay, OCR found no mention of any *mental disability* in any University document. The allegation of discrimination on the basis of mental disability could not be substantiated because there was no evidence that the University was aware of a mental disability or that the Director had ever spoken with the complainant. OCR has determined that the evidence is insufficient to support a finding of a violation of the implementing regulations of Section 504 and Title II with respect to the complainant's allegation that he was denied admission to the University on the basis of his disability.

#### Sexual Harassment

The Title IX regulations at 34 C.F.R. Section 106.31 (a) prohibits discrimination on the basis of sex in the provision or the enjoyment of any aid, benefit, or service offered by the recipient (University). Further, the regulation at 34 C.F.R. Sections 106.31 (b)(1) and (7) prohibits harassment that, on the basis of sex, results in a denial or limitation of any aid, benefit, service, right, or privilege.

The complainant contends that in February 1999, the female Coordinator of the graduate program engaged in sexual harassment by telling him via telephone that she had "a beautiful body." The complainant acknowledges that there were no witnesses to this conversation. Further, the complainant did not at any time raise the allegation of sexual harassment with the University. Although the Coordinator acknowledges speaking to the complainant on numerous occasions, she denies making this statement to the complainant or sexually harassing him in any manner. In the discussions with OCR, the complainant indicated this allegedly formal conversation pertaining to the admissions process was with a woman he had never met or talked with in the past. Under these circumstances the use of the words "I have a beautiful body" by an official of the University would be highly unusual.

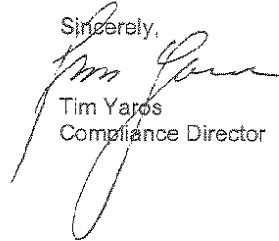
In order for OCR to determine whether sexual harassment actually occurred, the actions or conduct must be sufficiently severe, persistent, or pervasive as to limit a student's ability to participate in or benefit from an education program or activity or to create a hostile or abusive environment. The complainant's description of the event, a telephone conversation with the female Coordinator of the Master's Program indicating that she had stated to him that she had a beautiful body, does not in itself limit the complainant's participation in the program nor create a hostile or abusive environment. The alleged statement made by the woman even if true cannot be considered as severe, persistent, or pervasive and does not rise to the level of sexual harassment. OCR has determined that the evidence is insufficient to support a finding of a violation of the implementing regulations of Title IX at 34 C.F.R. Section 106.31 (a) and 34 C.F.R. Sections 106.31 (b)(1) and (7) with respect to the complainant's allegation that he was sexually harassed.

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OCR has determined that there is insufficient factual information to support the above allegations. OCR is closing this complaint effective the date of this letter.

I want to express my appreciation for the courtesy and cooperation that you and your staff, particularly Ms. Katie Butwin, Staff Attorney, extended to the staff of OCR as we worked to resolve this complaint. If you have any questions or concerns about the resolution of this complaint, please feel free to contact me or Mr. Samuel Hall, Equal Opportunity Specialist, at 312.886.8382.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim Yaros", is written over the typed name and title.

Tim Yaros  
Compliance Director

cc: Ms. Katie Butwin  
Staff Attorney  
Office of General Counsel