



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS
SOUTHERN DIVISION, DALLAS OFFICE

November 21, 2005

Ref: 06052107

Dr. Joel E. Anderson, President
University of Arkansas at Little Rock
2801 S. University Blvd.
Little Rock, AR 72204

Dear Dr. Anderson:

The U. S. Department of Education, Office for Civil Rights (OCR), Dallas Office, has completed its consideration of a complaint against the University of Arkansas at Little Rock (UALR), Little Rock, Arkansas, operated in violation of Title IX of the Education Amendments of 1972. Specifically, the complainant alleged that:

1. she was denied the opportunity for a grievance hearing when she filed a complaint of sexual harassment against the professor of a Technical Writing Class; and
2. UALR officials retaliated against her by charging her with "conduct inappropriate for an academic setting" and "disrespect for authority" (charges made by the Technical Writing Class professor), and suspending her from the University because of the complaint of sexual harassment she had filed against the same professor. In addition, the same professor gave her a grade of "F" for her Technical Writing Class.

OCR is responsible for determining whether organizations that receive or benefit from Federal financial assistance from the U.S. Department of Education or an agency that has delegated investigative authority to this Department are in compliance with 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 (2004). Title IX prohibits discrimination on the basis of sex.

In pertinent part, Title IX 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 academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives Federal financial assistance. . .

The UALR is a recipient of Federal financial assistance from the Department. Therefore, OCR has jurisdictional authority to process this complaint for resolution under Title IX. OCR investigated the following issues:

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1. Whether the UALR failed to provide the complainant a prompt and equitable resolution to the complaint of sexual harassment she filed against her Technical Writing Class professor; and
2. Whether the UALR retaliated against the complainant because she attempted to protect her rights by filing a complaint of sexual harassment against her Technical Writing Class professor.

During the investigation, OCR gathered and reviewed information and documentation provided by the UALR and the complainant, which included pertinent University policies and procedures, narrative statements from University officials, electronic mail correspondence between the complainant and University officials, and written statements by students. Additionally, OCR reviewed and considered information gathered during telephone conversations with the complainant, University officials, and UALR staff knowledgeable of the alleged acts of discrimination. As a result of our analysis, OCR determined there is insufficient evidence to support a conclusion of noncompliance with regard to the issues raised by the complainant's allegations. The bases for the OCR determination are summarized below.

Issue 1:

Whether the UALR failed to provide the complainant a prompt and equitable resolution to the complaint of sexual harassment she filed against her Technical Writing Class professor.

The Title IX regulation at 34 C.F.R. §106.8(b) requires that a recipient adopt and publish a grievance procedure that provides a "prompt and equitable" resolution of complaints of sex discrimination, including complaints of sexual harassment. Additionally, under §106.8(c), as part of a recipient's duty to ensure a nondiscriminatory educational environment, upon receiving notice of sexual harassment, the recipient must take responsive steps that are adequate to eliminate any hostile environment and prevent its recurrence. Generally, the University's response to a complaint of sexual harassment is adequate if it includes a thorough and objective investigation, prompt and effective action to stop any sexual harassment and prevent it from recurring and, if appropriate, a remedy for any discriminatory effects caused by the harassment.

OCR found that the UALR has a nondiscrimination notice and sexual harassment procedures that are disseminated in the UALR Student, Staff and Faculty Handbooks and on the University websites. Additionally, UALR publishes Sexual Harassment brochures, which are disseminated on campus and through orientation sessions each year.

The investigation revealed that the complainant was involved in an incident with her Technical Writing (English) professor on the night of April 21, 2005, during which she was ejected from the class. On that same night, she delivered a note to the chairman of the English Department that she had planned to leave taped to his door, and personally discussed with him the incident that occurred during the class. The department chairman stated that the complainant expressed that she believed that the professor was out of line, had been demeaning to her in class, made her feel degraded, and had "gotten into her space." She advised him that she might be filing sexual harassment charges against the professor. The chairman stated that he referred the complainant

to the associate dean of student's office to file a formal complaint. OCR reviewed a copy of an undated note from the complainant to the chairman of the English Department; the note states at the bottom "I may file sexual harassment charges." The complainant acknowledged that during her meeting with the chairman he advised her that she needed to contact the office of the Associate Dean of Students (ADS) or the Human Relations Office to file a complaint.

The evidence revealed that on April 25, 2005, the complainant sent an email to the chairman of the English Department, containing the subject "Sexual Harassment complaint against a faculty member at UALR" and indicated that the complainant was "expelled from" the class for being a classroom disruption. The actions described in the complainant's email included the professor's invasion of her personal space by placing his hands on her back or shoulders, getting so close that she could feel his breath on her neck, and coming within an inch of her face while grading homework. The email correspondence stated that the complainant expected "immediate redress of this issue" and that she intended to file a formal complaint and would appreciate assistance in the matter. OCR determined that the complainant also forwarded this email correspondence to the university provost, chancellor, and assistant provost on April 25, 2005. The chairman of the English Department and the other university officials notified the complainant in an email response that her correspondences was being referred to the Human Relations Director (HRD) who is the university official responsible for resolving complaints of sexual harassment. Contact referral information for the HRD was provided in the email responses to the complainant on April 25 and 26, 2005.

The investigation revealed that on April 28, 2005, the complainant sent an email to the HRD indicating that she believed retaliatory actions were being taken against her because of the April 25th email she sent and the complaint she was attempting to file alleging Title IX violations. The HRD responded to the complainant's email correspondence, on that same date.

OCR determined that the UALR student handbook provided two resolution procedures to address student complaints (informal and formal complaints). Analysis of the procedures determined that the formal complaint procedures required that a written complaint be submitted to the Office of Human Relations. The complainant acknowledged that she did not submit a written complaint as prescribed by the UALR procedures for filing a formal complaint. According to the HRD, she did not consider the email that she received as a "formal complaint" because it was not a written signed complaint directed to her, but rather a referral by other University officials for her to address the matter as the appropriate official responsible as required by University procedures to "address Title IX and retaliatory actions." In her response the HRD requested a meeting, which was tentatively scheduled for April 29, 2005, to discuss the complainant's allegations, thereby initiating an informal complaint process. The April 29th tentative date was later changed to May 4, 2005.

The evidence showed that the complaint investigation was initiated on May 4, 2005, in accordance with the informal complaint procedure and the Human Relations Investigatory Procedures outlined in the UALR Student Handbook. OCR's interviews with the complainant and the HRD confirmed that on May 4, 2005, a meeting was held between the complainant and the HRD. The complainant's mother also attended the meeting. The evidence shows that the HRD conducted an interview with the complainant regarding her allegations, and recorded

answers to the questions that she asked the complainant to make a record of the informal complaint. The HRD informed OCR that the complainant was unable to provide her any information regarding the specific acts of sexual harassment alleged by the complainant. She stated that during this meeting she requested that the complainant write a formal letter of complaint advising her of the specific acts that were committed against her, however, the complainant refused to cooperate with the process for filing a formal complaint. The complainant acknowledged providing the answers to the questions asked by the HRD regarding sexual harassment during the May 4, 2005 meeting, and stated that she did not sign the form that was completed by the Director and thus did not initiate a formal complaint in accordance with University procedures.

The HRD informed OCR that she considered the retaliation allegation made in the complainant's email dated April 28, 2005, and it was also discussed with the complainant during the May 4, 2005 meeting. She stated that the complainant advised her that the ejection from the Technical Writing class was the act of retaliation. The HRD stated that she advised the complainant that because the removal from the class occurred prior to the complainant's allegation of sexual harassment, she could not make a determination of retaliation. Therefore, according to the HRD, no further action was taken to address the allegation of retaliation.

A confidential letter, dated May 6, 2005, was sent to the complainant acknowledging her allegations of "sexual harassment, inappropriate touching, invasion of private space and retaliation." The letter informed the complainant that the English professor had been provided notice of the informal complaint and provided an opportunity to submit a written response to the allegations. The letter informed the complainant that her complaint would be handled in accordance with the university grievance procedures. Copies of the Sexual Harassment Policy and Grievance Complaint Procedures accompanied the letter that was sent to the complainant.

Notice was sent to the English professor on May 6, 2005, requesting information and evidence to be used in reaching a determination in the investigation. Additionally, pertinent information was gathered and witnesses were interviewed on May 16, 2005 in order for her to render a determination based on an adequate, reliable and impartial investigation. The HRD was the designated university official responsible for making the determination and providing written notification to the interested parties. OCR's analysis of information revealed that the investigation was conducted and a determination rendered, on May 18, 2005, within 30-days following the complainant's April 25, 2005 email alleging sexual harassment. OCR determined this timeframe to be in accordance with the procedures outlined in the UALR Student handbook, and provided a prompt and equitable resolution to the complainant's informal grievance. OCR determined that the resolution letter provided the complainant and other pertinent University officials with notice of the outcome of the investigation. There was no appeal, or formal, written complaint, filed regarding the matter and the complaint was closed.

Based on the information summarized above, OCR determined that the UALR provided a prompt and equitable resolution to the complainant's allegation of sexual harassment. Thus, OCR determined that there is insufficient evidence to support a conclusion of noncompliance with Title IX as it with regard to this issue. Therefore, OCR will take no further action regarding this issue.

Issue 2:

Whether the UALR retaliated against the complainant because she attempted to protect her rights by filing a complaint of sexual harassment against her Technical Writing Class professor.

The complainant alleged that UALR officials retaliated against her because she filed a complaint of sexual harassment against her Technical Writing Class professor. She claimed the retaliation took the form of being expelled from class; having charges brought against her (i.e., professor's refusal to report following the ejection from his class and his complaint of her filing a false claim), and receiving a grade of F in the English class.

In order to establish that retaliation occurred, it is necessary for OCR to establish each of the following elements: (1) the complainant participated in a protected activity; (2) the recipient was aware of the complainant's involvement in the protected activity; (3) the recipient took adverse action against the complainant; and (4) there is evidence of a causal connection (e.g., close proximity in time) between the protected activity and the adverse action. If a prima facie case of retaliation is established (each of these elements is proven), OCR will investigate to determine 5) whether the recipient has a legitimate, nondiscriminatory reason for its actions, which is sufficient to rebut the inference of discrimination created by the taking of an adverse action after the complainant engaged in a protected activity. OCR will also determine 6) whether any reason presented by the recipient is merely a pretext for discrimination in the form of retaliation.

Did the complainant engage in a protected activity?

A "protected activity" is one in which a person either opposes a practice made unlawful by the statutes enforced by OCR, files a complaint, testifies, assists or participates in an investigation, proceeding or hearing under the statutes enforced by OCR, or otherwise asserts rights protected by the laws enforced by OCR.

The investigation revealed that the complainant did engage in a protected activity. The complainant first engaged in a protected activity on April 25, 2005 when she initiated a complaint of sexual harassment via an email to the chairman of the English Department. The complainant also forwarded this email correspondence to the English Department Chairman, the Vice Chancellor and Provost, the Vice Chancellor of Academic Affairs, and the Associate Dean of Students. In addition, in an email to the HRD, dated April 28, 2005, the complainant alleged that she had been retaliated against for initiating a complaint of sexual harassment.

Was the recipient or the person(s) alleged to have taken the adverse action(s) aware of the protected activity?

OCR determined that university officials were first made aware of the complainant's claims of sexual harassment (protected activity) when complainant's email of April 25, 2005 was forwarded to the English Department Chairman, the Vice Chancellor and Provost, the Vice Chancellor of Academic Affairs, the Associate Dean of Students, and ultimately to the HRD for

handling on that date. The University officials acknowledged receipt of the emails containing the complainant's concerns and referring the complainant to the HRD as the appropriate person to handle the matter. The professor informed OCR that the HRD made him aware of the complaint filed by the complainant on April 25th.

Was the Complainant subjected to adverse action subsequent to the protected activity?

OCR has defined an "adverse action" as an action that adversely affects a person's work, education, or well being in a serious, lasting and usually tangible manner, i.e., something that is more than a transient, unpleasant incident.

1. **Expulsion from Class:**

The evidence indicates that the complainant was in fact told to leave the Technical Writing Professor's class. However this occurred on April 21st, four days before she engaged in a protected activity. Since the complainant suffered this alleged adverse action prior to engaging in a protected activity, retaliation cannot be established and OCR took no further action with regard to this alleged adverse action.

2. **Filing of April 22nd Incident Report:**

OCR determined that the professor filed an incident report regarding the complainant's expulsion from class on the morning of April 22, 2005. As indicated above, she did not engage in a protected activity until April 25th and the professor did not become aware of her engaging in a protected activity until April 25th. Since the complainant suffered this alleged adverse action prior to engaging in a protected activity, retaliation cannot be established and OCR took no further action with regard to this alleged adverse action.

3. **Filing of May 23rd Complaint of False Charges:**

In a memorandum to the HRD, dated May 23, 2005, Subject: "False Charges of Sexual Harassment and Retaliation against [the professor], the professor stated that he was filing a complaint against the complainant "...for making intentionally dishonest and maliciously false charges of sexual harassment and retaliation against [him]..." In the memorandum, the professor provided background information consisting of his receipt of a memo on May 9th from the HRD regarding the complainant's allegation of sexual harassment and retaliation, a brief description of the class, identification of the other students who witnessed her ejection from class on April 21, 2005, and his prior experience with the complainant in the class. He also provided a detailed response to the allegations in the complainant's April 25, 2005 email, and concluded by stating that the complainant was "using false and malicious claims" to retaliate against [him] for giving her a low grade and ejecting her from class. The professor requested that the HDR contact the student witnesses about his conduct in the class, and asked that she recommend that disciplinary measures be taken against the complainant if it was found that the witnesses and other evidence supported his representations of the matter.

OCR determined that the filing of the charge by the professor did not rise to the level of an adverse action as defined by OCR. In addition, there was no evidence of adverse action being

taken against, or suffered by, the complainant as a result of the professor's filing of his May 23rd Complaint of False Charges. Therefore, retaliation cannot be established. OCR took no further action regarding this alleged adverse action.

4. Receipt of "F" as grade in class:

After engaging in a protected activity, the complainant received an "F" for the class at the end of the semester. OCR determined that receipt of an "F" for this class affected the complainant's education in a lasting manner. Therefore, an adverse action did occur.

Was there a causal connection between the adverse action and the activity?

The complainant made her complaint of sexual harassment on April 25, 2005 and complaint of retaliation on April 28, 2005. She was given an "F" on May 12, 2005. Based on this information, OCR determined there to be a close proximity in time between the protected activity and the adverse action, thus providing evidence of a causal connection.

Does the recipient have a legitimate, nondiscriminatory reason for its actions?

OCR's interviews and analysis of information determined that the class syllabus provided grading and attendance requirements to be successful in the class. The class met one night a week, on Thursday, beginning on January 20, 2005 from 6:00 – 8:40 p.m. There were 15 class meetings during the semester. The class syllabus stated that the grade of "F" would be received if a student missed "four or more classes for any reason." The syllabus revealed the following range of points for a final grades: 90-100% = A; 80-89% = B; 70-79% = C; 60-69% = D; and 59% or fewer points = F.

OCR determined that the complainant missed four classes, and had less than 30% of the total points required for all class assignments. She also missed the final examination, which was worth 140 points. She never returned to the class after the night that she was ejected, April 21, 2005. Additionally, documentation revealed that prior to April 21st the professor provided the complainant two written notices wherein he notified her of the number of missed classes and the consequences of missing the maximum number of times for any reason. The evidence indicates that the complainant voluntarily chose not to return to the class after April 21, 2005. Neither the professor nor university officials advised her that she was suspended or expelled from the class. The complainant further stated that she never discussed with anyone her ability to return or not return to class. OCR's review of the professor's grade book for the semester further determined that the points recorded for quizzes that the complainant took revealed that she earned 109 of a possible 384 points for the entire semester, yielding an average class score of 28%. Thus, the complainant's letter grade for the class based on her quiz points and attendance in class calculated as an "F".

The complainant acknowledged that she read the syllabus that was provided by the professor. She further acknowledged the course requirements for grading and regular attendance. She stated that she missed a total of four classes, including the final exam.

Based on the above information OCR determined that the recipient provided a legitimate nondiscriminatory reason for the assignment of the final grade of "F" for the complainant. OCR did not determine that retaliation occurred regarding to this issue. Thus, OCR determined that there is insufficient evidence to support a conclusion of noncompliance Title IX, with regard to this issue.

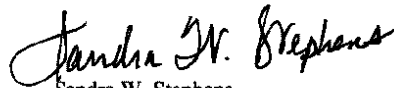
Based on the above, it is OCR's determination that there is insufficient evidence to support conclusions of noncompliance regarding both issues of the complainant's complaint. Therefore, OCR will take no further action regarding this complaint, and this complaint is closed as of the date of this letter.

Under OCR procedures we are obligated to advise the complainant and the institution against whom the complaint is filed that intimidation or retaliation against a complainant 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 any 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.

We appreciate your cooperation as well as that of your staff throughout the course of the investigation. If you have any questions regarding this letter, please contact Ms. Bessie Shaw, Equal Opportunity Specialist, of our staff, at 214/661-9647 or me at 214/661-9600.

Sincerely,



Sandra W. Stephens
Compliance Team Leader