



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS
SOUTHERN DIVISION, DALLAS OFFICE

AUG 01 2007

Ref: 06062077

R. Gerald Turner, President
Southern Methodist University
P.O. Box 750100
Dallas, Texas 75205

Dear President Turner:

This letter is to notify you that the U. S. Department of Education, Office for Civil Rights (OCR), Southern Division, Dallas Office, has made a determination in the above- referenced complaint. In this complaint, which OCR received on May 22, 2006, the complainant alleged that Southern Methodist University (SMU), Dallas, Texas, discriminated against her on the basis of sex (female). Specifically, the complainant alleged that the SMU Perkins School of Theology (SMU-Perkins) failed to take prompt and effective action in response to her sexual harassment complaint that she filed with SMU on December 21, 2005, wherein the complainant alleged that an employee of the Thanks-Giving Square Inter-Faith Foundation (TGS), the site of her theological internship, placed his hands on her breasts.

This agency 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 *et seq.*, and its implementing regulation, at 34 C.F.R. Part 106 (2005), which prohibits discrimination on the basis of sex. SMU, a private post-secondary institution, is a recipient of Federal financial assistance from the Department. Therefore, OCR has jurisdictional authority to process this complaint for resolution under Title IX.

Under Title IX § 106.31(d), whenever a recipient requires participation by any student in any education program not wholly operated by the recipient, or which facilitates, permits, or considers such participation as part of or equivalent to an education program or activity operated by the recipient, e.g., student/pastor assignments, a recipient shall develop and implement a procedure designed to assure itself that the operator or sponsor of the other education program takes no action affecting the student, which would be prohibited by Title IX. In addition, said recipient shall not facilitate, require, permit, or consider such participation if discriminatory action occurs.

1999 BRYAN ST., SUITE 1620, DALLAS, TX 75201-6810
www.ed.gov

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

Title IX and its implementing regulation prohibit discrimination based on sex. Sexual harassment of students is a form of prohibited sex discrimination. OCR generally defines sexual harassment as unwelcome conduct of a sexual nature that is sufficiently severe, persistent or pervasive to interfere with, deny, or limit, on the basis of sex, a student's ability to participate in or benefit from any education program or activity.

OCR investigated the following issues: (1) whether SMU developed and implemented a procedure designed to assure itself that TGS, the site of an educational internship program not wholly operated by SMU, takes no action affecting the student, which would be prohibited by Title IX; and (2) whether SMU failed to take appropriate effective action in response to a complaint alleging sexual harassment of a student.

In order to reach a determination in this case, OCR gathered and analyzed information and documentation provided by the complainant, SMU-Perkins, and SMU. The documentation included, but was not limited to, correspondence between SMU-Perkins and TGS, the SMU nondiscrimination policy under Title IX, and the SMU and SMU-Perkins grievance procedures. We also interviewed the complainant, the Associate Director of the SMU-Perkins Intern Program/Intern Supervisor (Associate Director), and the Executive Assistant to the President of SMU/Director of the Office of Institution Access and Equity (Equity Director). As a result of our investigation, OCR has determined that there is not sufficient evidence to conclude noncompliance with Title IX. Provided below is the basis for OCR's determination in this complaint.

OCR investigated to determine whether SMU developed and implemented a procedure designed to assure itself that TGS would take no action affecting the student, which would be prohibited by Title IX. Evidence reflects that the SMU-Perkins Master of Divinity (M.Div.) degree program, in which the complainant was enrolled, required the satisfactory completion of a supervised internship, which provided for a "real-world" work experience. These internships traditionally last for seven, nine, or twelve months. SMU is responsible for placing interns in an appropriate external program that will provide real-world learning experiences within the focus of the student's ministry goals, i.e., community-outreach, prison, local church, etc. In this case, SMU arranged for the complainant to complete a twelve-month (June 1, 2005 to May 31, 2006) internship at TGS, designated as the "teaching agency." As such, OCR determined that SMU was responsible for developing and implementing a procedure designed to assure itself that, with respect to the SMU administration of the TGS program, the mentor/pastor of the partnering education program takes no action affecting the student, which would be prohibited by Title IX.

The Equity Director and the Associate Director reported to OCR that it had developed and implemented a procedure. Specifically, evidence reflected that prior to any student beginning an internship, the student/pastor and the mentor/pastor had to attend orientations, during which SMU provided and reviewed a handbook containing materials related to compliance with Federal regulations, including Title IX. The complainant confirmed this information. Based on our investigation, OCR determined that SMU developed and implemented a procedure designed to assure itself that the TGS would take no action affecting the student, which would be prohibited

by Title IX. As such, there is insufficient evidence to conclude noncompliance with Title IX regarding this issue.

OCR investigated to determine whether SMU failed to take prompt and effective action in response to the complainant's sexual harassment complaint that she filed with SMU on December 21, 2005. When OCR is asked to investigate or otherwise resolve complaints of sexual harassment of students, specifically incidents caused by third parties, OCR considers whether in compliance with the Title IX implementing regulations: (1) the school has a disseminated policy prohibiting sex discrimination under Title IX and published effective grievance procedures; (2) the school appropriately investigated or otherwise responded to allegations of sexual harassment; and where the school recognizes that sexual harassment has occurred, (3) the school has taken immediate and effective action to eliminate the hostile environment and prevent its recurrence.

OCR's investigation revealed that pursuant to Title IX, SMU designated the Equity Director to serve as its Title IX Compliance Officer. Evidence reflected that the Equity Director was responsible for providing counsel to any member of the university community regarding any alleged incidents of discrimination (including sexual harassment) and mediating and/or investigating allegations of discrimination, as appropriate. Evidence also reflected that SMU notified its students, employees, applicants, and the public of the designated employee's name, office address, and telephone number as required by Title IX.

Evidence reflected that SMU took specific and continuing steps to notify employees, students, applicants, and the public that it has policy prohibiting sex discrimination in its education program and activity. Based on our review of the general nondiscrimination policy and notice, OCR determined that the nondiscrimination policy as written comports with the requirements of Title IX.

Pursuant to OCR policy guidance, OCR has identified a number of elements in evaluating whether a recipient's grievance procedures are prompt and equitable, including whether the procedures provide for:

- Notice to students, parents, and employees of the procedure, including where complaints may be filed;
- Application of the procedure to complaints alleging harassment carried out by employees, other students, or third parties;
- Adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence;
- Designated and reasonably prompt timeframes for the major stages of the complaint process;
- Notice to the parties of the outcome of the complaint; and
- An assurance that the school will take steps to prevent recurrence of any harassment and correct its discriminatory effects on the complainant and others, if appropriate.

Pursuant to Title IX, SMU adopted and published grievance procedures entitled "University Grievance Policy and Procedure: Policy Number 2.8" (general grievance procedure) that was adopted on November 11, 2005, which addressed complaints of discrimination. These procedures were published in the University Policy Manual and were available for review and download by students, employees, applicants, and the public through the SMU Internet website. Further, the general grievance procedures provided for investigation of discrimination complaints within reasonably prompt timeframes.

However, OCR had the following concerns regarding the general grievance procedures: a) they were not published or mentioned in either the SMU or SMU-Perkins student handbooks; b) they did not specifically indicate that the procedures applied to complaints alleging discrimination by employees, students, and third parties; c) they did not include a provision for providing notice to the parties of the outcome of the grievance and; and d) they did not include an assurance that SMU would take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate.

There is no Title IX requirement for a policy and procedures that specifically address sexual harassment. However, when a recipient has a sexual harassment policy and procedures, then OCR must review it to determine whether it complies with Title IX and OCR policy. SMU had a sexual harassment policy and procedures, entitled "Sexual Harassment and Consensual Relationships," Policy No. 2.5, which was adopted November 11, 2005. The SMU sexual harassment policy, which included a cross-reference to the general grievance procedure, was disseminated to applicants, employees, students, and the public through the SMU Institutional Access and Equity Office or any SMU or SMU-Perkins administrative office, and published in the SMU and SMU-Perkins student handbooks and on the SMU and SMU-Perkins Internet websites. As noted earlier, the complainant confirmed that she was aware of this SMU sexual harassment policy and procedures and relied on it to resolve her sexual harassment complaint.

However, as a result of our review of the policy and procedures, OCR identified the following concerns with the sexual harassment policy: a) it did not specifically indicate that complaints could be filed alleging sexual harassment by a third party; b) the procedures, as written, do not provide specific timeframes for the major stages of the informal and informal procedures; and c) the policy defines sexual harassment only within the context of an employee or peer (i.e., "a person with power abuses that power" and "peer sexual harassment").

Based on this information and OCR's evaluation of the grievance procedures, as applied, to the complainant's sexual harassment complaint, OCR established that, while there were concerns regarding the written Title IX grievance procedures and sexual harassment policy and procedures, SMU had disseminated policy prohibiting sex discrimination under Title IX and there was insufficient evidence to conclude that SMU had failed to publish effective grievance procedures.

As to whether SMU appropriately investigated or otherwise responded to the complainant's allegations of sexual harassment, OCR considered information provided by the complainant, SMU and TGS (provided to OCR by SMU). As a result, OCR established that the complainant

notified SMU-Perkins on December 21, 2005 (filed a formal complaint), of the act of alleged sexual harassment. She also notified SMU that another employee (also a SMU student) at TGS also reported the possibility of other similar incidents involving the identified male employee. Specifically, correspondence between the complainant and the Associate Director reflected that on December 21, 2005, the Associate Director received an electronic message from the complainant. Attached to the electronic message was a document entitled, "Sexual Harassment Incident Report," in which the complainant related the details of the alleged sexual harassment. Both the Associate Director and the complainant agree that they spoke on December 21, 2005, regarding her sexual harassment complaint. In addition, it is uncontested that the complainant provided information to SMU regarding possible similar incidents involving Student 2.

The OCR investigation revealed that SMU did not conduct an independent investigation or inquiry. However, SMU-Perkins did immediately respond to the complaint of sexual harassment by directing TGS, to appropriately address the matter and submit a written assurance upon completion to ensure a sexually hostile environment did not exist. Specifically, correspondence between the Associate Director and TGS leadership indicated that on the day following receipt of the complainant's sexual harassment complaint (December 22, 2005), the Associate Director transmitted an electronic message to the TGS President/Executive Director notifying her of the sexual harassment complaint and that the complainant would not return to TGS until TGS "dealt with the staff person and established due process." The electronic message indicated that the Associate Director required a written response from TGS illustrating what steps had been taken by TGS leadership to address the alleged sexual harassment and to prevent future incidents, as appropriate. Also, on December 22, 2005, the Associate Director transmitted an electronic message to the complainant informing her that she should not return to TGS until SMU received a written account from TGS of what action TGS leadership had taken to resolve the complaint.

Evidence provided by the complainant and SMU indicated that the complainant continued her internship duties off-site during the December holidays (e.g., hospital visits, research, etc.) and spent three weeks in January 2006 in Israel in a pre-arranged immersion course as part of her program. In addition, evidence reflected that during the Associate Director's conversation with the complainant on December 21, 2005, she advised the complainant that she could end her internship with a "pass" based on her expansive body of work accomplished to date, previous clerical experience, and her excellent mid-point evaluation. The complainant declined this option, citing losing her stipend as the motivating factor.

Further, on January 11, 2006, evidence indicated that the Director of the SMU-Perkins Intern Program met with the Chairman of the Thanks-Giving Square Foundation and discussed the complainant's allegations. As a result, TGS investigated allegations of sexual harassment made by the complainant and as allegedly reported to the complainant by Student 2.

A review of a written statement dated February 13, 2006, indicated that TGS memorialized its response to the sexual harassment complaint. In this document, TGS reported to SMU that it was unable to substantiate the allegations of sexual harassment through its interviews with the alleged harasser and its office staff, which included Student 2. The February 13, 2006 letter further stated that, in response to the allegation, TGS leadership adopted a sexual harassment

policy and posted a copy of its policy in the employee break room. In addition, while TGS was unable to make a determination as to whether or not sexual harassment had occurred, TGS warned the alleged harasser that any further allegations of this nature would result in his termination as an employee of TGS. TGS also placed the alleged harasser on paid administrative leave for the duration of the complainant's internship (January 28, 2006 through June 1, 2006). However, he was allowed in the TGS public chapel to conduct Prayer on Fridays. He was directed that whenever he was on the premises for Prayer, he was not to enter the TGS clergy offices where both the complainant and Student 2 worked. The complainant was informed that on Fridays, she could conduct her internship duties at an alternative worksite. The TGS Director received a one-on-one tutorial regarding response to and investigation of a sexual harassment allegation, and a seminar on sexual harassment was arranged for TGS staff. TGS paid the complainant her full agreed upon stipend.

Further, a review of a correspondence dated December 22, 2005, reflected that the Associate Director urged the complainant to seek counseling with the psychologist assigned to her intern peer group. During an interview with OCR on August 8, 2006, the complainant confirmed this statement. In addition, she stated that she sought counseling in January 2006, and received regularly scheduled counseling by the SMU peer group psychologist until her graduation from SMU in May 2006. Even though the investigation could not substantiate that the alleged discrimination occurred, SMU paid for the counseling provided to the complainant until March 9, 2006 (the date SMU-Perkins curtailed the internship). The counselor continued services, *pro bono*, until the complainant graduated. Further, on March 9, 2006, SMU-Perkins curtailed the complainant's internship, giving her a "pass" in the pass/fail degree requirement. The complainant graduated in May 2006 with a M.Div. degree and is currently a minister in Oklahoma.

Based on this information, OCR established that SMU appropriately responded to allegations of sexual harassment, as required by OCR policy. Further, OCR established that even though the complaint allegations could not be substantiated through the TGS investigation, SMU took immediate and effective action reasonably calculated to end any harassment, eliminate a hostile environment, if one had been created, and prevent harassment from recurring. As such, OCR determined that SMU took prompt and effective action in response to complainant's report of sexual harassment.

In conclusion, OCR determined that there is insufficient evidence to support a conclusion of noncompliance with Title IX. Therefore, OCR is closing this complaint as of the date of this letter. This letter is not intended nor should it be construed to cover any other matters that may exist regarding compliance with Title IX, and are not specifically discussed herein

However, it should be noted that OCR strongly encourages SMU to revise its grievance procedures consistent with OCR policy and the Title IX implementing regulations. Such modifications could help alleviate concerns of students and employees regarding the interpretation and application of the policy in the future.

Page 7 – R. Gerald Turner, President

Under the Freedom of Information Act, 5 U.S.C. § 552, 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.

If you have any questions regarding this correspondence, please contact me at 214 661-9600, Bonnie S. Evans, Equal Opportunity Specialist, at 214 661-9612, or Melissa Malonson, Senior Attorney, at (214) 661-9637.

Sincerely,

A handwritten signature in cursive script that reads "Charlene Furr".

Charlene F. Furr
Team Leader, Dallas Office
Office for Civil Rights