



UNITED STATES DEPARTMENT OF EDUCATION

**OFFICE FOR CIVIL RIGHTS
SOUTHERN DIVISION, DALLAS OFFICE**
Arkansas, Louisiana, Mississippi, Oklahoma, Texas
**1999 BRYAN STREET, SUITE 2600
DALLAS, TEXAS 75101
(214) 880-2459**

June 26, 1998

Ref: 06972090

Dr. Ray Authement, President
University of Southwestern Louisiana
USL Drawer 41008
Lafayette, Louisiana 70504

Dear Dr. Authement:

This letter is to inform you of the determination of the U.S. Department of Education, Office for Civil Rights (OCR), Southern Division, Dallas Office, regarding the resolution of the above-referenced complaint. In this complaint, which was filed with OCR on April 24, 1997, the complainant alleged that the University of Southwestern Louisiana (USL), Lafayette, Louisiana, discriminated against her in violation of 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 106.71, which incorporate by reference 34 C.F.R. Part 100.7(e) and prohibit intimidatory and retaliatory acts by recipients of Federal financial assistance. Specifically, she alleged that:

1. The USL discriminated against her on the basis of sex when a professor in the Center for Advanced Computer Studies (CACS) Department, subjected her to inappropriate remarks and gestures of a sexual nature in October of 1996, while she was a computer science graduate assistant; and
2. The USL retaliated against her because she complained to USL officials about the alleged sexual harassment by:
 - a. the alleged harasser assigning her a grade of "C" in Computer Science 531 at the end of the Fall 1996 semester;

- b. the alleged harasser writing disparaging remarks about her work in March of 1997;
- c. the alleged harasser failing to write letters of recommendation for fellowships in February of 1997, which resulted in her being denied a fellowship in the spring of 1997;
- d. denying her petition, dated January 5, 1998, for a lighter course load; and
- e. taking over a year to resolve her complaint regarding her grade appeal.

OCR is responsible for ensuring compliance with regulations enforced by this agency that prohibit discrimination on the basis of race, color, national origin, disability, sex and age. However, OCR's enforcement authority, with one exception, only covers institutions that receive or benefit from Federal financial assistance from the U.S. Department of Education or an agency that has delegated investigative authority to the Department. The exception applies to OCR's responsibility as a designated agency under Title II of the Americans with Disabilities Act of 1990 (Title II). OCR's coverage under Title II extends to all public entities, not only to Federal fund recipients. Therefore, to the extent any exist, nonrecipient public libraries, public educational institutions, and public vocational institutions are within OCR's jurisdiction as a designated agency under Title II. A review of our records reveal that the CPS is a recipient of Federal financial assistance. Therefore, OCR has jurisdictional authority to process this complaint for resolution.

In resolving this complaint, OCR conducted interviews with her and USL officials, and also reviewed and analyzed documentation, including pertinent USL policies and procedures, provided by both her and the USL. Based upon our analysis of this information, OCR determined that it would take no further action regarding allegation numbers 1. and 2., a., because the USL provided her a resolution through its internal grievance procedures that would be comparable to that which would have been provided by OCR. Further, with regard to the remaining allegations, 2., b., c., d. and e., OCR determined that there was insufficient evidence to support her allegations of retaliation. Provided in the following pages is a summary of findings, by allegation, that explains how these determinations were made.

1. The USL discriminated against her on the basis of sex when a professor in the Center for Advanced Computer Studies (CACS) Department, subjected her to inappropriate remarks and gestures of a sexual nature in October of 1996, while she was a computer science graduate assistant; and

In a letter to her dated April 29, 1997, OCR informed her that we would not proceed with complaint resolution because she had filed this complaint allegation with the USL through its internal procedure. We informed her that we were closing the complaint, as of the date of that letter.

Additionally, we informed her that she could refile her complaint with OCR within 60 days of the completion of the USL internal proceedings, which she did.

When cases are refiled with OCR at the completion of such proceedings, OCR's consideration of these complaints would not be a de novo review of the case. Specifically, we would not do a second investigation of the complaint because OCR anticipates that the internal proceedings of the recipient will provide the complainant with a resolution process comparable to that of OCR. In such instances, we request and review reports of the internal proceedings to determine whether the recipient provided a comparable resolution process to address the complainant's allegation of sexual harassment.

In accordance with these procedures, OCR requested a copy of USL's policies, practices, and procedures regarding sexual harassment of students by staff that were in effect during the Fall 1996 and Spring 1997 academic semesters. OCR also requested the transcript and any records documenting the USL's internal grievance proceedings that addressed her complaint of alleged sexual harassment.

OCR reviewed the report of the internal grievance proceedings, dated May 12, 1997, that addressed alleged sexual harassment (inappropriate remarks and gestures of a sexual nature). Further review of the report indicates that she withdrew her complaint on April 22, 1997. The report also notes that the USL issued the report regarding the alleged sexual harassment because it had completed its investigation in this regard prior to receiving your letter of withdrawal. The report stated that, "after a lengthy investigation, neither the documentation nor the information

provided by the numerous individuals interviewed substantiate a reasonable conclusion of sexual harassment..." As a result, OCR determined that the USL followed its grievance procedures in addressing her complaint allegations.

Based upon the aforementioned information, OCR has determined that the USL provided her a resolution that would be comparable to that which would have been provided by OCR. Therefore, OCR will take no further action regarding this allegation.

- 2a. The USL retaliated against her because she complained to USL officials about the alleged sexual harassment by the alleged harasser assigning her a grade of "C" in Computer Science 531 at the end of the Fall 1996 semester.

OCR determined that she had also filed this complaint allegation through the USL internal grievance procedures. For this reason, in a letter dated April 22, 1997, OCR informed her that we were closing the previous complaint and that she could refile within 60 days of the completion of the internal grievance procedures. She subsequently refiled this complaint allegation with OCR.

In resolving this allegation, we reviewed the internal grievance proceedings, dated May 12, 1997, that addressed not only alleged sexual harassment but also alleged retaliation (assigning her a grade of "C" for work completed in Computer Science 531, Fall 1996). When the USL issued the report regarding her complaint of alleged sexual harassment and retaliation, a decision had not been reached regarding her grade appeal. The report indicated that there was not enough evidence to substantiate a reasonable conclusion of sexual harassment or retaliation. The Grade Appeals Committee, subsequently upheld the grade of "C" that she was assigned for work completed in Computer Science 531. On March 12, 1998, the Graduate Council upheld the Grade Appeals Committee's decision to uphold the grade.

OCR determined that the USL followed its grievance procedures in addressing this allegation and provided her a resolution that would be comparable to that which would have been provided by OCR. It was not necessary to apply the elements of retaliation to resolve this allegation because it was addressed through the USL internal grievance procedures. Therefore, OCR will take no further action regarding this allegation.

2. **Retaliation Allegations Not Addressed in the Complaint Filed with USL (Allegation 2., b through e)**

In order to establish that retaliation occurred, as alleged in allegation 2., b through e, it is necessary for OCR to determine that:

1. The complainant participated in a protected activity;
2. The recipient was aware of the protected activity;
3. The complainant suffered or was subjected to an adverse action; and,
4. There is evidence of a causal connection between the protected activity and the adverse action.

If these elements are proven, then retaliation is established, unless the USL provides a legitimate, nondiscriminatory reason for its actions. In resolving these allegations, we applied the aforementioned elements of retaliation to the facts gathered in this case.

OCR determined that she participated in a protected activity. Specifically, OCR determined that on or about October 15, 1996, she discussed the alleged sexual harassment by her CMPS 531 course professor, with the Assistant Dean of Sciences. On October 22, 1996, she submitted a written complaint against this professor to the President of USL, the Vice President for Academic Affairs and the Dean of Sciences. She met with USL officials on October 23, 30, and 31 to discuss her concerns, but was not satisfied with their response. On November 7, 1996, she withdrew her complaint against the professor, stating that she did not believe the professor meant her "personal or academic harm in this matter" and stated that "this issue is now resolved in my own mind."

However, on December 12, 1996, she received a grade of "C" in the course (CMPS 531) taught to by the professor that she alleged sexually harassed her. On January 24, 1997, she initiated a grade appeal with the university; and on February 17, 1997, she refiled the complaint with USL alleging sexually harassment and retaliation. For these reasons, OCR also determined that USL was aware of her activity.

In continuing the retaliation analysis, OCR reviewed information to determine if there was a causal connection between the protected activity and the adverse action. Causal connection may be established if there is a closeness in time between the recipient's knowledge of the protected activity and the alleged adverse actions. Because the alleged adverse actions occurred subsequent to, and began immediately after her participation in the protected activity, there is a causal connection between the protected activity and the alleged adverse actions. However, the USL provided legitimate, nondiscriminatory reasons for its actions regarding each of the specific incidents of alleged retaliation described below.

- 2b. **The USL retaliated against her because she complained to USL officials about the alleged sexual harassment by the alleged harasser writing disparaging remarks about her work in March of 1997.**

OCR found that the accused professor's written statement, or the alleged disparaging remarks to which she referred, were included in a response to the USL investigating office on March 14, 1997. OCR determined that the alleged disparaging remarks reflected the professor's point of view regarding her allegations made against him. Based on the above, OCR concludes that there is insufficient evidence to establish that the professor's response was given in an effort to retaliate against her.

- 2c. **The USL retaliated against her because she complained to USL officials about the alleged sexual harassment by the alleged harasser failing to write letters of recommendation for fellowships for her in February of 1997, which resulted in her being denied a fellowship in the spring of 1997.**

In light of the circumstances, complaints filed against the professor by the complainant, it is reasonable that the professor would not provide letters of recommendations for his accuser. Therefore, OCR has determined that this is a legitimate, nondiscriminatory reason for not providing letters of recommendation for fellowships for her.

- 2d. **The USL retaliated against her because she complained to USL officials about the alleged sexual harassment by denying her petition, dated January 5, 1998, for a lighter course load.**

According to the terms of an Assistantship for all students in the CACS program, a student must take at least nine semester hours and complete a teaching Assistantship assignment each semester. Thus, to approve a lighter load, would have violated the terms of the Assistantship.

Furthermore, the USL's policy requires that for a student to be awarded a Master's degree, the student must earn a B or better in required courses or retake the course for which this requirement is not met. Subsequent to her request for a lighter load, she received a grade of "C" in a required course. Even though she received a grade of "C" in a required course, the USL waived this requirement for her. The USL also issued a letter, dated May 26, 1998, stating that she had completed the requirements for a Master's Degree in Computer Science and the degree would be conferred during the fall commencement exercises on December 12, 1998. Based on the above, OCR concludes that there is insufficient evidence to establish that the USL denied her request for a lighter course load in an effort to retaliate against her.

- 2e. The USL retaliated against her because she complained to USL officials about the alleged sexual harassment by taking over a year to resolve her complaint regarding her grade appeal.

OCR reviewed the USL's written grade appeal process, the transcript of her grade appeal hearing and documentation submitted to OCR by her and the USL. OCR determined that the USL followed its grievance process, which gave her a fair and impartial forum to make her grievance. The appeal transcript reveals that the timeframes were extended due to various requests by her for a continuance and also by relevant persons not being available over the summer months during the period of time that the appeal was active. OCR did not find evidence to indicate that the USL delayed the process any more than was necessary. Based on the above, OCR concludes that there is insufficient evidence to establish that the USL delayed her grade appeal process in an effort to retaliate against her.

Based on aforementioned findings, OCR determined that the USL provided legitimate, nondiscriminatory reasons for its actions in each of the circumstances presented. Thus, OCR finds that there is insufficient evidence to support her allegations of retaliation.

Therefore, we are closing this case as of the date of this letter. This concludes OCR's consideration of this complaint. This letter is not intended, nor should it be construed, to cover any other matters that may exist and are not specifically discussed herein.

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, it will

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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 letter, please feel free to contact Ms. Gwen Gabriel, team attorney, at (214) 880-2457.

Sincerely,



Charlene F. Furr
Team Leader
Dallas Office
Southern Division