



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS - REGION VII

APR 15 2002

Kathleen Murphy Markie, Counsel
Office of the General Counsel
University of Missouri System
227 University Hall
Columbia, Missouri 65211

Ref: 07022060

Dear Ms. Markie:

On June 13, 2002, the Office for Civil Rights (OCR), U.S. Department of Education (Department), received a complaint alleging that the University of Missouri-Kansas City (University), Kansas City, Missouri, is discriminating against a student (Student) on the bases of national origin and sex, and has retaliated against the Student. Specifically, the complainant alleged the University (1) has denied the Student access to the doctoral program in physics due to her national origin; (2) has allowed an environment hostile to the Student's national origin to exist in the University's physics department; and (3) has allowed professors in the University's physics department to sexually harass the Student. Additionally, the complainant alleged (4) that a professor at the University has retaliated against the Student by accusing her of plagiarism because she complained of discrimination to University officials; and (5) the University failed to provide the Student with a prompt, equitable grievance process responsive to her complaint of discrimination.

OCR is responsible for enforcing, among other civil rights statutes, Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d *et seq.*, and its implementing regulation at 34 C.F.R. Part 100. Title VI prohibits recipients of Federal financial assistance from the Department from discriminating on the basis of race, color, or national origin. The Title VI regulation, at 34 C.F.R. § 100.7(e), also provides that a recipient shall not intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title VI, or because that individual has made a complaint, testified, assisted, or participated in any manner in an investigation under this part.

OCR is also responsible for enforcing, among other civil rights statutes, 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. Title IX prohibits recipients of Federal financial assistance from the Department from discriminating on the basis of sex in education programs or

8930 WARD PARKWAY, SUITE 2037, KANSAS CITY, MISSOURI 64114
www.ed.gov

Our mission is to ensure equal access to education and to promote educational excellence throughout the nation.

activities. The Title IX regulation at 34 C.F.R. § 106.71 incorporates the Title VI regulation prohibiting retaliation. Since the University is a recipient of Federal financial assistance from the Department, it is required to comply with the regulations implementing Title VI and Title IX.

In reaching a determination on this complaint, OCR conducted a thorough investigation of each allegation. OCR interviewed the Student on August 9, 2002. During onsite visits in December 2002, OCR interviewed 24 administrators, faculty, and staff members at the University. Additionally, we reviewed substantial documentation provided by both the Student and the University. OCR's findings for each complaint allegation are set forth below.

Allegation 1

The complainant alleged the University denied the Student access to the University's doctoral program in physics based on the Student's national origin. In an interview with members of my staff on August 8, 2002, the Student identified several circumstances through which she claims the University attempted to prevent her from completing a doctoral degree in physics at the University. These circumstances included preventing the Student's enrollment by placing and then not releasing a hold on her student account; by not renewing the Student's graduate teaching assistantship (GTA) when her performance as a teaching assistant was satisfactory; and by preventing the Student from continuing her graduate studies because professors in the physics department were unwilling to be her research advisor.

OCR has carefully considered the circumstances the Student described above. The evidence available to OCR does not support a conclusion that the Student's national origin was a factor in any of the above actions taken by the University.

Through interviews with the physics department chair, physics department staff, and staff in the University's accounting office, OCR confirmed the University did place a hold on the Student's account for money the Student owed the University for use of the facsimile and copy machine in the physics department. In May 2002, the University withheld the money owed by the Student from her monthly stipend check. Staff in the physics department did not receive confirmation that the money owed by the Student had been paid until August 2002. At that time, staff in the physics department requested a release of the hold on the Student's account. In an interview, the Director for Student Life (DSL) informed OCR a second hold was placed on the Student's account in September 2002. According to the DSL, the DSL sent two letters to the Student in August 2002 and September 2002 requesting the Student to come to her office to discuss a disciplinary referral arising from an incident in which the Student struck a staff member in the physics department. The DSL informed

OCR the Student did not respond to her letters. Consistent with the University's practice, the DSL placed a second hold on the Student's account in September 2002, which currently remains in effect, as an incentive for the Student to meet with the DSL to discuss the disciplinary referral.

The chair of the physics department explained that the physics department uses GTAs to recruit graduate students in need of financial assistance to the University. The Student was not awarded a GTA as part of her admission package because she was on full scholarship from the Pakistan government. The Student received a GTA during the 2001-02 academic year only because a GTA unexpectedly became available after she was admitted to the University. At the end of the 2001-02 academic year, rather than renewing the GTA for the Student, the physics department used that GTA to recruit a new graduate student to the University. Other professors in the physics department confirmed the University's explanation for not renewing the Student's GTA.

In interviews with numerous professors in the physics department, OCR learned that the Student was having difficulty finding a professor to serve as her research advisor. All of the professors the Student asked to be her research advisor, however, declined to be her research advisor for reasons unrelated to the Student's national origin.

Based on the available information, OCR has determined there is insufficient evidence to support a finding that the University denied the Student access to the doctoral program in physics based upon her national origin. Therefore, OCR is closing allegation 1 as of the date of this letter.

Allegation 2

The complainant alleged the University has allowed an environment hostile to the Student because of her national origin to exist in the physics department. In an interview with OCR, the Student stated the physics department chair made negative comments about her national origin. The Student said the comments included references to disliking Pakistanis and the way they dress; an observation that the Student would not understand certain things because she is a Pakistani woman; and a threat that the Student would be deported and have to return home without a degree.

In an interview with OCR, the physics department chair denied making any negative statements about the Student relating to the Student's national origin, in particular those described by the Student. Moreover, no witnesses interviewed by OCR reported hearing anyone in the physics department, including the department chair, make negative comments about the Student in connection with her national origin. In fact, several individuals reported faculty and staff in the physics department were very supportive of the Student and tried to

assist the Student in a variety of ways, including intervening with the Pakistan Embassy regarding a problem with the Student's visa and scholarship, helping the Student furnish an apartment for herself and her husband, helping her shop for groceries, and introducing her to colleagues both professionally and socially.

Based on the available information, OCR has determined there is insufficient evidence to support a finding that the University allowed an environment hostile to the Student because of her national origin to exist in the physics department. Therefore, OCR is closing allegation 2 as of the date of this letter.

Allegation 3

The complainant alleged the University has allowed professors in the physics department to sexually harass the Student. The Student stated two professors in the physics department sexually harassed her by calling her "honey" and "sweetie"; referring to her as the "chairman's girl"; patting her on the back; placing their hands on her shoulders; and making other sexually suggestive remarks. Both professors denied the Student's allegations. Further, as noted above, OCR interviewed numerous faculty and staff members in the physics department about the Student's allegations. None of the faculty or staff members interviewed by my staff observed these professors behave towards the Student in the manner described by the Student.

Additionally, the Student informed OCR the department chair sexually harassed her by inviting her to lunch with him. According to information from the numerous individuals OCR interviewed, the chair of the physics department invited the new graduate students in the department to have lunch with him. On January 25, 2002, the department chair's secretary sent the Student a written invitation to lunch with the department chair. The Student went to lunch with the department chair and two other graduate students. According to the department chair, the conversation focused on graduate study in the physics department. Neither the Student nor any witnesses identified any other specific occasions on which any professor in the physics department invited the Student to lunch. Based on the available information, OCR has determined there is insufficient evidence to support a finding that the University allowed professors in the physics department to sexually harass the Student. Therefore, OCR is closing allegation 3 as of the date of this letter.

Allegation 4

The complainant alleged a professor retaliated against the Student by accusing the Student of plagiarism because the Student complained of discrimination to University officials. To determine whether retaliation has occurred, OCR first must establish *prima facie* case of retaliation. A *prima facie* case of retaliation is established by showing that: (1) an individual

participated in a protected activity; (2) the recipient was aware of the protected activity; (3) the recipient took adverse action(s) against the individual contemporaneously with or subsequent to the individual's participation in the protected activity; and (4) there was an inferable causal relationship between the adverse action and the individual's participation in the protected activity. Once OCR has established a *prima facie* case of retaliation, the recipient must articulate a legitimate, non-retaliatory reason for its action. Then OCR analyzes the evidence to determine whether the recipient's reason is a pretext for retaliation.

According to documentation received from the University and interviews conducted with University administrators, the Student met with the Affirmative Action Officer (AAO) on March 20, 2002. The Student verbally reported a number of concerns she had with professors in the physics department. According to the AAO, the student mentioned one sexual comment she overheard a professor make, but the Student did not provide any specific information about who made the comment. The AAO stated the Student did not raise any concerns about discrimination on the basis of national origin or relate to her any of the comments the Student has identified as discriminatory in her OCR complaint. The AAO believed the Student's concerns involved academic issues rather than discrimination allegations. Nonetheless, during her meeting with the Student on March 20, the AAO provided the Student with a copy of the University's Discrimination Policies and Grievance Procedures, and the appropriate form to complete and sign if the Student wanted to file a discrimination complaint. According to the AAO, the Student did not return a signed discrimination complaint form. The AAO made numerous attempts to contact the Student to follow up on their March 20 meeting, but was not successful in reaching the Student.

According to the Student, she turned in a draft paper for Physics 590 to the physics department chair (the professor for that course) on or about March 28, 2002. Within one or two weeks after the Student turned in the paper, the department chair returned the paper to the Student, accused her of plagiarism and told her to rewrite the paper or he would give her a grade of "F" for the course. Rather than rewrite the paper, the Student changed her status in Physics 590 to "audit" without the department chair's knowledge or consent.

According to the Student and information provided by the University, the Student met with the Associate Dean for the School of Graduate Studies (Associate Dean) in May 2002. The Associate Dean stated the Student raised several concerns about her experiences in the physics department at that meeting, including concern that she might receive a failing grade in Physics 590, the nonrenewal of her GTA, her difficulty in finding a research advisor in the physics department, charges for use of the facsimile and copy machine in the physics department, and someone hacking into her e-mail and deleting messages. According to the Associate Dean, the Student did not raise concerns about discrimination on the basis of either national origin or sex during their meeting. On May 17, 2002, the Associate Dean met with the Student, her husband, and the physics department chair to address the Student's

concerns. At that meeting the Student read from a prepared statement. Although the Student did not provide the University a copy of her written remarks, the Student provided a copy to OCR which we have reviewed. The Student does not mention a concern about discrimination on the basis of national origin in her written remarks. The Student states in her remarks she was subjected to sexual harassment, but she does not identify any incident of sexual harassment in her written remarks.

On May 25, 2002, the Student returned to the AAO's office and requested a complaint form to initiate a grievance. The AAO again provided the Student a copy of the applicable policies and procedures as well as a complaint form. Although the form was provided to her twice along with the applicable policies and procedures, the Student did not submit a completed, signed complaint form to the University to initiate a formal grievance.

On June 10, 2002, unaccompanied by the Student, the complainant hand-delivered a letter to the University. In that letter, which is unsigned by the Student, the complainant stated she was filing a third party complaint on behalf of the Student against the University alleging discrimination against the Student on the bases of national origin and sex. A human resource consultant (consultant) working with the University's Affirmative Action Office agreed to inquire into the allegations raised by the complainant even though the Student herself had not come forward to provide information or consent for the University to investigate the matter. The consultant completed his inquiry (with the limitation that the Student did not provide information or clarification about her experiences in the physics department at the University) and determined there was no evidence the University had discriminated against the Student on the basis of either national origin or sex. The consultant prepared written findings on June 24, 2002, and presented those findings to the complainant and the Student in July 2002.

During the consultant's investigation of the issues raised by the complainant in June 2002, the consultant spoke with the physics department chair about the plagiarism accusation and the Student's audit of Physics 590. The physics department chair explained that Physics 590 was not an appropriate class for a student to audit because it was an independent study and that he had not consented for the Student to audit Physics 590. The consultant learned from the registrar that generally audits of courses should only be allowed with the permission of the course professor. The consultant determined the Student was granted audit status in Physics 590 by mistake and that the Student's enrollment in Physics 590 could be changed back into a graded status. The consultant informed the physics department chair about his findings. After speaking with the consultant, the department chair contacted the registrar, changed the Student's enrollment in Physics 590 to a graded status, and gave her a grade of "F" in the course because the Student had not resubmitted her paper.

On June 13, 2002, the complainant filed this complaint (docket number 07022060) with OCR on behalf of the Student. The Student did not provide consent for OCR to proceed with the complaint on her behalf until August 8, 2002. In a letter dated August 29, 2002, OCR informed the University of this complaint.

OCR has determined the Student engaged in a protected activity and the University had notice of the protected activity. OCR also finds the University took adverse action against the Student when the physics department chair accused her of plagiarism, and ultimately gave her a grade of "F" in Physics 590. OCR is unable to establish an inferable causal relationship between the Student's protected activity and the University's adverse action. The physics department chair informed the Student in early April 2002 of his concern she had committed plagiarism in her research paper and his intent to give her a grade of "F" in Physics 590 if she did not rewrite her paper. This was approximately two months prior to the time the complainant raised allegations of discrimination with the University on behalf of the Student in June 2002. The department chair's April conversation with the Student about her research paper and grade in Physics 590 also preceeded the filing of this complaint with OCR by approximately two months. Although the physics department chair removed the Student's audit status and gave her a grade of "F" in Physics 590 shortly after the complainant raised discrimination allegations against the University on behalf of the Student, the evidence suggests the physics department chair was following through on action he had already planned to take before the complainant raised discrimination allegations against the University. Moreover, the evidence suggests the Student's enrollment in Physics 590 should not have been changed to an audit status in the first place. By changing the Student's enrollment in Physics 590 to a graded status, physics department chair was correcting the Student's enrollment status in that course. Because OCR is unable to establish an inferable causal relationship between a protected activity and the adverse action, and thus a *prima facie* case of retaliation, it is not necessary to consider the remaining elements of the retaliation analysis set forth above.

After carefully considering the available information, OCR has determined there is insufficient evidence to support a finding that the University retaliated against the Student by accusing her of plagiarism. Therefore, OCR is closing allegation 4 as of the date of this letter.

Allegation 5.

The complainant alleged the University failed to provide the Student a prompt, equitable grievance process to address her complaint of discrimination. As noted above in the discussion regarding allegation 4, the Student did not file a written statement or grievance report as required by the University's procedure or provide a written request/consent for the University to conduct a full investigation into her allegations of discrimination.

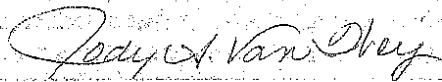
Moreover, the University, through its consultant, did attempt to investigate the discrimination allegations raised by the complainant in her June 10 letter, despite the lack of participation and cooperation of the Student during that investigation.

Based on the available information, OCR has determined there is insufficient evidence to support a finding that the University denied the Student a prompt, equitable grievance process to resolve her complaint of discrimination. Therefore, OCR is closing allegation 5 as of the date of this letter.

OCR has determined there are no remaining allegations in this complaint which are appropriate for further case resolution activities. Therefore, OCR is closing this complaint as of the date of this letter. The determinations contained in this letter are not intended and should not be construed to address any compliance issues under the regulations implementing Title VI or Title IX which may exist but are not specifically discussed herein.

In any future correspondence with OCR, please refer to the number referenced above. This will enable OCR staff to immediately route your correspondence to the individual assigned to this complaint. If you have any questions, please contact Nate Hicks, Equal Opportunity Specialist, at (816) 268-0583 (voice) or (800) 437-0933 (telecommunication device for the deaf).

Sincerely,



Jody A. Van Wey
Associate Director