



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS—REGION VII

AUG - 9 2006

John Mucci, President  
Wright Business School  
8951 Metcalf Avenue  
Overland Park, Kansas 66212

Re: OCR Docket # 07062039

Dear Mr. Mucci:

On February 10, 2006, the U.S. Department of Education (Department); Office for Civil Rights (OCR), received a complaint alleging retaliation and discrimination on the basis of sex by Wright Business School (School), Overland Park, Kansas. This is to inform you we have completed the investigation of this complaint.

Specifically, the complainant alleged:

1. an instructor sexually harassed the complainant; and
2. the director retaliated against the complainant by assigning poor extern sites after the complainant filed, with the director, a complaint of sexual harassment against an instructor.

OCR is responsible for enforcing:

- Title VI of the Civil Rights Act of 1964 (Title VI), 42 United States Code (U.S.C.) § 2000d, and its implementing regulation, 34 Code of Federal Regulations (C.F.R.) Part 100. Title VI prohibits discrimination on the basis of race, color or national origin by recipients of Federal financial assistance (FFA). The Title VI regulation at 34 C.F.R. § 100.7(e) prohibits retaliation against persons for engaging in a protected activity. Protected activity includes filing or participating in an OCR complaint or taking other action opposing any activity that violates laws OCR enforces.
- Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681, and its implementing regulation, 34 C.F.R. Part 106. Title IX prohibits discrimination on the basis of sex in any education program or activity operated by a recipient of FFA. The regulation implementing Title IX at 34 C.F.R. § 106.71 incorporates by reference the Title VI regulation prohibiting retaliation.

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

As a recipient of FFA from the Department, the School is subject to these laws. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

Allegation 1

The complainant alleged an instructor sexually harassed her. The harassment began in March 2005, when the instructor made sexually offensive comments to the complainant in class. The female instructor said the complainant did not focus on the instructor's teaching like the complainant did for the male instructors and the complainant needed to be a lesbian for a day so she could focus. The instructor said many times in class that if the complainant were a man, she would listen to the instructor better. In July or August 2005, at a University of Kansas extern site, the instructor told School students that the complainant liked men and would be successful at that location because her instructors were male.

The complainant stated that on August 20, 2005, she received numerous telephone messages and calls from the instructor. The instructor left a message saying she was going to the hospital. The complainant claimed the instructor has a history of substance abuse related to alcohol and medications, and sounded very intoxicated. The instructor left another message saying she wanted the complainant to meet her male cousin because she knew the complainant loved men and her cousin was hot. In a subsequent message, the instructor chided the complainant for not returning her call and warned the complainant she "might miss the time of your life." The instructor's male cousin also left a message saying he was just trying to get in touch with her. At one or two in the afternoon, the instructor called again and the complainant answered the phone. The instructor informed the complainant that if she would go out with the instructor's cousin, the instructor would give her an extern site the complainant wanted at Baptist Lutheran Medical Center, either in the operating room or obstetrics. During the conversation, the instructor was slurring her words, appeared again to be intoxicated, and the complainant ended the call. The instructor left several more messages that day, only one of which the complainant felt was offensive. In that message the instructor referred to her earlier calls when she said she was going to the director's house and "needed to be careful" what she said to the complainant while there.

The complainant said she met with the School's director and director of education on August 22, 2005, and provided them a copy of the taped phone calls. The complainant did not specifically state to the director and director of education that the instructor's phone call was sexually offensive, but informed OCR that in listening to the tape, the sexual harassment was evident.

In its response to OCR's data request, the School claimed that although the instructor's phone calls to the complainant on the weekend of August 19 through 21, 2005, were

inappropriate, they do not constitute sexual harassment. The School claimed the instructor made the calls after her employment ended with the School, and she was not acting on behalf of or with the consent of the School when making the calls. The School provided OCR a copy of the instructor's resignation letter dated August 17, 2005, claiming exceptional stress in her job. The letter stated her resignation would be effective September 15, 2005. The School accepted her resignation, but was unaware of her behavior regarding any phone calls she placed the weekend of August 19 through 21, 2005, after she was relieved of all duties as an employee. The instructor's last day at work was August 17, 2005, the day she submitted her letter of resignation.

Representatives of the School stated that on or about the first week in September 2005, the complainant met with the director regarding the instructor's phone calls. The complainant informed the director that the instructor was apparently drunk during the phone calls and had made comments of a sexual nature to her. She told the director she was not concerned, but she wanted the calls to stop. The director asked if the complainant had received any subsequent calls from the instructor, and the complainant said she had not. The director asked the complainant to provide the School a written statement of the events. The complainant never provided the written statement. On September 8, 2005, the complainant provided the School an audiocassette copy of the instructor's voice mail messages left the weekend of August 19 through 21, 2005. The School's review of the tape indicated, with one exception, that the calls were not inflammatory in any way. The exception was the instructor's statement, "I got someone that wants to meet you and it's really really hot and I know you love men, give me a call. . . ." The School sent the instructor a letter dated September 8, 2005, stating, "You are instructed to cease and desist immediately tortiously interfering with the School's advantageous business relationships with its students, staff, and faculty," and further states, "Should you persist, the School will have no choice but to sue you for damages and equitable relief." The president/vice chairman met with the instructor and executed an agreement of separation on September 15, 2005, the effective date of which was August 15, 2005.

The director confirmed the complainant provided the School an audiotape copy of the phone calls the complainant received from the instructor. The director asked the complainant for a written statement regarding the alleged sexual harassment, but she did not receive one. The director did not hear any sexually offensive language from the instructor on the audiotape.

#### Analysis

The regulation implementing Title IX at 34 C.F.R. § 106.31(a) states 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 or other education program or activity operated by a

recipient which receives Federal financial assistance. The regulation implementing Title IX at 34 C.F.R. § 106.31(b)(3) states that in providing any aid, benefit, or service to a student, a recipient shall not, on the basis of sex, deny any person any such aid, benefit, or service.

Title IX protects students from being subjected to a sexually hostile environment. To establish a violation of Title IX under the hostile environment theory, OCR must find that: (1) a sexually hostile environment existed; (2) the School had actual or constructive notice of the sexually hostile environment; and (3) the School failed to respond adequately to redress the sexually hostile environment. To determine whether a sexually hostile environment exists, OCR must establish that the harassment is sufficiently severe, persistent, or pervasive so as to interfere with or limit the ability of an individual to participate in or benefit from the services, activities or privileges provided by the School. OCR examines the context, nature, scope, frequency, duration, and location of sexual incidents, as well as the identity, number, and relationship of the persons involved. The harassment must, in most cases, consist of more than casual or isolated incidents to establish a Title IX violation.

OCR's investigation revealed the following: The instructor tendered her resignation on August 17, 2005, to be effective September 15, 2005. On August 20, 2005, the complainant received three telephone calls from the instructor that the complainant considered to be harassing in nature. The complainant brought the incident to the School's attention in late August or early September 2005. The evidence presented by the complainant and the School is conflicting and OCR was unable to verify the specific date the School was actually notified. Another student made similar accusations and following a review of tape-recorded information from the complainant, the School sent the instructor a "cease and desist" letter on September 8, 2005.

OCR first examined whether a sexually hostile environment existed. While the harassing conduct was not persistent or pervasive, because it only happened once, OCR has determined it was severe in that the complainant's training prospects were threatened, based on the proposition of the instructor. OCR finds this harassing conduct interfered with the complainant's ability to participate in the School's educational program because the instructor suggested the complainant could be rewarded with the extern site she wanted at Baptist Lutheran Medical Center in return for dating her cousin. Based upon a consideration of all the information, OCR has concluded a sexually hostile environment existed, particularly because the instructor conditioned the complainant's receipt of a preferable extern site on her agreement to date the instructor's cousin.

OCR next determined whether the School had notice of the sexually hostile environment. OCR's investigation found the School became aware of the incident in late August or early September 2005.

Finally, OCR examined whether the School responded adequately to redress the sexually hostile environment. The OCR investigation found that when the School was made aware of the harassing conduct of the instructor, the School sent a "cease and desist" letter to the instructor and developed a separation agreement that was signed by the instructor on September 15, 2005. The complainant did not receive any additional harassing contact from the instructor.

Based on the evidence OCR reviewed in this case, OCR has determined the School's responses to the complainant's report of sexual harassment by the instructor are consistent with the requirements of the regulation implementing Title IX at 34 C.F.R. § 106.31(a) and (b)(3), and resolves this allegation of the complaint. As a result, OCR is closing allegation 1 of the complaint as of the date of this letter and will take no further action with respect to allegation 1.

#### Allegation 2

The complainant alleged the director retaliated against her by assigning poor extern sites after the complainant filed a complaint of sexual harassment against an instructor with the School's director. The complainant alleged she received sexually offensive messages and phone calls on August 20, 2005, from an instructor in the School's surgical technician program. The complainant said she filed a sexual harassment complaint with the director and assistant coordinator on August 22, 2005. As part of her sexual harassment complaint, the complainant provided the August 20<sup>th</sup> phone messages and described the phone calls with the instructor and her male cousin on that day. The complainant enrolled in the program in early 2005, and at the time of her enrollment, she said she specifically identified her interest in a plastic surgery training site when the instructor asked if she had any training preferences. She claimed that because the instructor and director are good friends, the director was aware of the complainant's dissatisfaction with the extern sites the instructor assigned the student. The instructor informed the complainant on August 21, 2005, that she had to check herself into rehab and would not return to the School. The director informed the complainant on August 22, 2005, that the instructor had resigned. The complainant alleged that after the instructor left, the director advised the newly assigned placement coordinator of the extern sites the departed instructor's students, including the complainant, should be assigned to. The new placement coordinator asked the complainant about her training preferences. The complainant stated she would like training at a plastic surgery site, but she was assigned extern sites for the specialties of eyes, eye surgery, and sterile processing.

The complainant informed OCR that another problem with the extern sites assigned to her was the reduced number of hours she worked at most of the extern sites. She confirmed she often did not work the normal 30 hours a week at these extern sites, but claimed this was due

to the extern sites not having enough work for her to do; not because she was not willing to work the hours. She also claimed she would sometimes have to wait two to four weeks for the School to assign her another extern site. The complainant was scheduled to graduate in September 2005, but did not graduate because she did not have enough clinical hours working at extern sites. She stated she worked the hours assigned to her at each extern site.

The School denied that the director retaliated against the complainant by assigning her poor extern sites after the complainant filed the sexual harassment complaint against the instructor. The president and director gave OCR an overview of the School's surgical technician program. Students prepare by studying relevant material in the classroom for 30 weeks. At the end of the 30 weeks, students are prepared to work at extern sites. Students complete 15 weeks of training at various extern sites to provide them with the hands-on experience necessary to qualify them for positions after they graduate. Students sign a contract with the extern site they are assigned to. In the contract, students commit to a dress code as well as behavioral, academic, and attendance requirements. Students have no choice of extern sites. The School's extern coordinator assigns extern sites as they become available. Students are rotated every three weeks between extern sites to allow them to gain experience in instrumentation, specialties, plastics, labor/delivery, and prep/scrub. Students are supervised at each extern site by a preceptor or supervisor employed by that facility. The extern coordinator is the School's contact for the on-site supervisor at each extern site for the students. There is no specific policy regarding the removal of School students from an extern site, but behavior and attendance can result in removal. The director looks at each instance on an individual basis and makes a decision. Exceptions can be made depending on the circumstances.

In its written response to this allegation, the School stated the complainant attended school for almost five months after the date she reported the sexual harassment and was terminated from the surgical technician program due to her attendance at extern sites. Students are expected to attend their extern sites on a daily basis without exception, just like a job. In the 14 weeks the complainant worked at extern sites, she completed only 267.55 hours. She should have completed at least 420 hours in the 14 weeks to graduate. She was absent on occasion during her first four extern sites, but her unauthorized absence for a continuous two-week period from her fifth extern site, Menorah Medical Center (Menorah), breached the School's externship rules and resulted in her termination from the surgical technician program.

The School provided OCR information from the student's file. On June 24, 2005, the complainant signed a clinical practicum agreement, which indicated the student would report to a facility staff member who acts as the education coordinator with the School. The education coordinator completes and provides the School director weekly evaluations for the student. Under the clinical practicum agreement's Student Rules and Regulations, the

student agrees to work a minimum of 30 hours per week. To receive full credit for the practicum, a student must complete 450 hours at one or more clinical sites. Clinical attendance is critical and mandatory, and three absences of the student's course requirement of 450 hours is considered excessive and will result in disciplinary action at the discretion of the School's director. Violation of any of the rules can lead to disciplinary action as determined by the School's director. Documentation and interviews indicate that following the complainant's filing of the sex discrimination complaint the extern coordinator assigned four extern sites for the complainant. Although the complainant claimed she received less than the required 30 hours per week at her extern sites and that the gaps between extern sites were the result of retaliation by the director, she provided OCR no written documentation or witnesses to support these claims, and OCR's investigation did not reveal evidence that the School failed to provide sites that would give the required work hours.

The complainant's student evaluation reports indicate she completed 267.55 hours at her extern sites. She worked the required minimum of 30 hours a week only once, at the Medical Center at Kansas University, during her externships. A Drop Summary for the complainant dated February 21, 2006, indicates a drop date of February 19, 2006, because of poor externship attendance.

OCR was able to interview representatives of Menorah Medical Center. The representatives informed OCR that the complainant worked January 9, 2006 to January 14, 2006, and failed to return to complete her externship. Menorah's representatives stated there was work for her, but she simply failed to show up to complete her training. Following her failure to complete her externship with Menorah, the School dismissed the complainant from the surgical technician program on February 19, 2006.

The director for the Family Birthing Center at Menorah (Menorah director) informed OCR that no one at Menorah made a decision to terminate the complainant from that extern site. The complainant worked there approximately one week and then never returned. The Menorah director stated that in March or April 2006 she spoke with an unknown School staff member and informed her that Menorah could no longer accept School students for training. The reasons were because the Menorah director was busy giving orientation to new staff at Menorah; she was also disappointed that the complainant did not return to Menorah.

The Menorah director said Menorah generally gives School students three 12-hour shifts to work each week, but was not aware if the complainant specifically had three 12-hour shifts for the one week she trained at Menorah. The Menorah director informed OCR she assigned a scrub technician to supervise the complainant. The scrub technician told OCR she was unaware of anyone at Menorah who said the complainant could not continue her training there; the complainant simply did not show up for work one day and did not return. The complainant trained at Menorah for only one week. The scrub technician said the

complainant had the same work schedule she did, 12-hour shifts on Mondays and Tuesdays and six hours on Saturday. The scrub technician said the Menorah director told her that Menorah would no longer accept School students because some of the School's students were not very motivated, and the Birthing Center was training new OB technicians at the time.

The director denied she advised the new extern coordinator (who took over the position on August 17, 2005, the effective date of the previous extern coordinator's resignation) of the extern sites the complainant should be assigned to. The director informed OCR the extern coordinator assigns extern sites to students as the sites become available. The current extern coordinator confirmed with OCR that he assigned extern sites to the complainant after the previous extern coordinator resigned on August 17, 2005, and that the director was not involved in the assignment of extern sites to the complainant. He usually asks students what sites they would prefer for their training, but also advises them there is no guarantee of the sites to which they are assigned. The extern coordinator informed OCR that after the complainant asked him for a plastic surgery site, he assigned her to Dr. Hyné's Plastic Surgery Center in December 2005. The complainant trained there for about a week, which was the only time this location had available.

#### Analysis

The complainant alleged the director retaliated against her by assigning her poor extern sites after the complainant filed a complaint of sexual harassment against an instructor with the director.

The regulation implementing Title VI at 34 C.F.R. § 100.7(e) states that a recipient may not intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing. The regulation implementing Title IX at 34 C.F.R. § 106.71 contains a similar prohibition against retaliation.

To determine whether retaliation has occurred, OCR must establish that 1) an individual engaged in a protected activity; 2) the recipient had notice of the protected activity; 3) the recipient took adverse action against the individual subsequent to the protected activity; and 4) there is an inferable causal connection between the protected activity and the adverse action. An individual engages in a protected activity by filing a complaint of discrimination, participating in a complaint alleging discrimination, or opposing actions reasonably believed to be discriminatory. If OCR establishes these elements, then OCR determines whether the recipient had a legitimate, non-discriminatory reason for the adverse action that is not pretextual.



OCR has determined the complainant participated in a protected activity by filing a sexual harassment complaint with the director in late August or early September 2005, and, as a result, the director was aware of the protected activity.

OCR finds there is no causal connection between the protected activity and the adverse action. The complainant was assigned to four sites following the resignation of the instructor. One of the sites was a plastic surgery center as the complainant had requested. The complainant's final site was Menorah Medical Center where she worked for one week. This site was assigned five months after the report of the sexual harassment. The evidence OCR obtained showed the complainant was assigned to Menorah and worked from January 9 to January 14, 2006, and failed to return to Menorah to complete her externship. The complainant was dismissed from the surgical technician program on February 19, 2006, following her failure to return to an extern site. The termination is consistent with the clinical practicum agreement the complainant signed and the policy of the School. There was no evidence that the extern sites were of poor quality or that there was not sufficient work for the complainant at the work sites.

Based on the available information, OCR has determined there is insufficient evidence to establish that the director retaliated against the complainant by assigning her poor extern sites after she filed a complaint of sexual harassment with the director. OCR's investigation found no causal connection between the complainant's protected activity and the adverse action. As a result, OCR is closing allegation 2 of this complaint and will take no further action with respect to allegation 2.

#### Procedural Concerns

OCR determined that the School's sexual harassment policy does not include contact information for the individual(s) designated as the School's Title IX coordinator. The School does not include its sexual harassment policy in the School's 2005 Catalog. OCR also determined the School's grievance procedure is incomplete in that it does not include provisions for timely, thorough investigation of allegations of sexual harassment, does not include timelines for filing complaints and the appeal process, does not provide students effective notice of the procedure, and does not provide the name, office address, and telephone number of the individual designated as the School's Title IX coordinator. OCR identified these procedural concerns in another complaint filed against the School, 07062036.

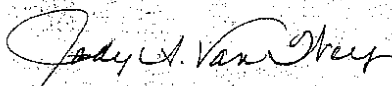
On August 4, 2006, OCR received the enclosed signed Resolution Agreement (Agreement) from the School that, when implemented, will fully resolve the procedural concerns identified in this complaint. Therefore, OCR considers this case resolved as of the date of this letter.

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OCR will monitor the School's implementation of the Agreement. Continued compliance with the regulation implementing Title IX is contingent upon OCR's receipt of documentation showing completion of the actions planned by the School. Failure to implement the Agreement as scheduled will result in OCR immediately resuming the investigation of this issue.

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 regarding this matter or if you need technical assistance in the completion of the activities required in the Agreement, please contact Jan Chapin, Equal Opportunity Specialist, at (816) 268-0556 (voice) or (877) 521-2172 (telecommunications device for the deaf), or by email at [janet.chapin@ed.gov](mailto:janet.chapin@ed.gov).

Sincerely,



Jody A. Van Wey  
Supervisory Equal Opportunity Specialist

Enclosure

**RESOLUTION AGREEMENT  
WRIGHT BUSINESS SCHOOL  
DOCKET NUMBER 07062029, 07062036, 07062039**

Wright Business School (School), Overland Park, Kansas, submits the following Resolution Agreement (Agreement) to the U. S. Department of Education, Office for Civil Rights (OCR), to resolve procedural issues of the above-referenced complaints pertaining to its sexual harassment policy and a grievance procedure. These complaints were filed pursuant to 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.

This Agreement addresses the School's responsibility to develop and implement a policy prohibiting sexual harassment and to develop and implement an appropriate grievance procedure applicable to complaints of discrimination on the basis sex, including complaints of sexual harassment. Neither the execution of this Agreement nor the actions taken by the School to comply with this Agreement shall constitute, nor be construed or represented as, an admission by the School, or any affiliated entity, of any liability or of any breach of contract or violation of any statute, common law duty, constitution, or administrative rule or regulation. The School expressly denies any such liability or violation.

Specifically, the School agrees to take the following actions:

1. By October 4, 2006, the School will develop and implement a policy prohibiting sexual harassment that is consistent with OCR's March 13, 1997 Notice regarding sexual harassment published in the Federal Register [62 Federal Register 12035]: (A copy of this notice is enclosed.) The School's sexual harassment policy will include, at a minimum, the following provisions:
  - a. A provision that specifically addresses methods to identify and remedy a sexually hostile environment;
  - b. Examples of staff-on-student and student-on-student sexual harassment;
  - c. A statement of the possible disciplinary consequences for violation of the policy;
  - d. A provision that if an employee (administrator, teacher, or non-certified staff) receives a report of sexual harassment, the School will immediately investigate the matter to take disciplinary action where appropriate;
  - e. Identification, by name or position title, office address and telephone number of the individual designated to investigate reports and complaints involving sexual harassment.

### Reporting Provision

By October 4, 2006, the School will provide to OCR a copy of its revised sexual harassment policy that complies with the guidelines set forth above in items a through e of this portion of the Agreement.

2. By October 4, 2006, the School will implement a revised grievance procedure applicable to complaints of discrimination on the basis of sex, including complaints of sexual harassment by students or employees. The grievance procedure must include, at a minimum, the following:
  - a. A statement that the grievance procedure is applicable to complaints alleging discrimination on the basis of sex, including allegations of sexual harassment by students or employees;
  - b. A requirement that all complaints will be promptly addressed, within specified time frames provided by the School, and thoroughly investigated;
  - c. Provisions for maintaining the confidentiality of the person who files a complaint and notice that retaliation against a person who files a complaint of sex discrimination, including sexual harassment, or persons who participate in related proceedings, is prohibited;
  - d. Provisions that are consistent with OCR's March 13, 1997 Notice regarding sexual harassment that is referenced above; and
  - e. Notice that complaints of discrimination on the basis of sex, including complaints of sexual harassment, may be filed with the U. S. Department of Education, Office for Civil Rights, 8930 Ward Parkway, Suite 2037, Kansas City, Missouri 64114-3302, (816) 268-0550.

### Reporting Provision

By October 4, 2006, the School will submit to OCR a copy of its revised grievance procedure applicable to complaints of discrimination on the basis of sex, including complaints of sexual harassment by students or employees.

3. By October 11, 2006, the School will disseminate its revised sexual harassment policy (Item 1 of the Agreement) and revised grievance procedure (Item 2 of the Agreement) to all students and employees by:
  - a. Publishing the sexual harassment policy and grievance procedure in the school catalog;
  - b. Posting the sexual harassment policy in prominent locations in the School's buildings;
  - c. Disseminating the sexual harassment policy and grievance procedure to all current students and employees by providing each a copy of the sexual harassment policy and grievance procedure; and
  - d. Continuing to disseminate the sexual harassment policy and grievance procedure to all incoming students at the time of student orientation where such information will be explained to the students and providing all new employees a copy of the sexual harassment policy and grievance procedure.
4. The School will conduct annual training sessions with its employees regarding the School's sexual harassment policy and grievance procedure.

#### **Reporting Provisions**

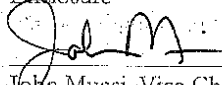
By October 4, 2006, the School will submit to OCR a copy of each published sexual harassment policy and grievance procedure to students and employees. [Any written policies being submitted in response to Item 2 above do not need to be duplicated for this reporting requirement.]

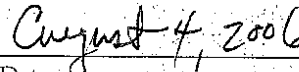
By October 4, 2006, the School will provide pictures showing the sexual harassment policy is posted in prominent location in the School's buildings.

**Reporting Provision**

By October 11, 2006, the School will submit assurance to OCR that the School has executed all provisions of Item 3 of this Agreement.

Enclosure

  
\_\_\_\_\_  
John Mucci, Vice Chairman  
Wright Business School  
Overland Park, Kansas

  
\_\_\_\_\_  
Date