

action after learning of the protected activity; and (4) there is a causal connection between the protected activity and the adverse action from which retaliation may be inferred; and (5) the recipient has a legitimate, non-retaliatory reason for its action, and (6) whether the reason presented by the recipient is a pretext for retaliation. If the response to a standard at any point is negative, the analysis is suspended and a finding of insufficient evidence to establish a violation is made. OCR's findings of fact regarding the complainant's allegation of retaliation are as follows:

Legal Analysis

Protected Activity and Knowledge of Protected Activity

The first two steps in the retaliation analysis are determining whether the complainant participated in a protected activity and whether the University was aware of the protected activity.

The evidence shows that the University had notice of the complainant's participation in protected activities when OCR notified the University of the complainant's initial complaint (08992052) against the University on July 21, 1999. OCR subsequently closed this complaint on November 9, 1999.

Additionally, a review of the University's record of formal grievances filed by the complainant establishes that the complainant filed three formal grievances on September 3, 1999.

Through interviews with University staff and Counsel, OCR established that the University considers the complainant to be involved in ongoing complaints against the University.

Therefore, OCR determined that the complainant participated in protected activities and that the University was aware of her participation in the protected activities.

Adverse Action

The third step in the retaliation analysis is determining whether the complainant was subjected to adverse action contemporaneously with or subsequent to the recipient's learning of the complainant's participation in the protected activity. This step requires a determination of whether the alleged retaliation qualifies as an adverse action. An adverse action is something that adversely affects a person's work, education or well being in a serious lasting and tangible manner and something that is more than a transient, unpleasant incident.

On November 3, 2000, the University, College of Education, Department of Curriculum and Instruction informed the complainant, by letter, that she was not accepted into the Curriculum and Instruction doctoral program.

OCR determined that the complainant's denial into the Department of Curriculum and Instruction (C and I Department) doctoral program constitutes an adverse action in that it affects the complainant's education in a serious lasting and tangible manner.

Causal Connection

Pursuant to OCR policy, a causal connection can be inferred based on the closeness in time between the protected activity and the adverse action; a change in treatment after the University became aware of the protected activity; or treatment of others that is different than those alleged to be the subject of retaliation.

Because the University considers the actions taken by the complainant against the University to be on going, OCR was able to establish a causal connection based on the closeness in time between the protected activity and the adverse action. Additionally, OCR established that the complainant's application to the C and I doctoral program was her first application to a doctoral program at the University since her participation in earlier protected activities. Also, the complainant was the only applicant of the nine applicants to the Curriculum and Instruction doctoral program who was not accepted into the doctoral program.

Legitimate, Nondiscriminatory Reasons

Once evidence of a causal connection between participation in a protected activity and an adverse action has been established, OCR will determine whether there are any legitimate, nondiscriminatory reasons given for the action taken by the University. OCR must determine whether the reasons advanced by the University reflect a non-retaliatory motive that would rebut or dispel the inference of retaliation. It is sufficient if such rebuttal evidence raises a genuine issue of fact as to whether the recipient retaliated against the complainant or the student.

The University's stated reason for not accepting the complainant into the C and I doctoral program was that although there is no requirement that Ph.D. applicants have K-12 teaching experience, her interests for studying in the C and I Department did not meet the broad interests of the departmental faculty, which is teaching students at the K-12 level.

The C and I Department Doctoral intake committee members stated to OCR that they did not believe the complainant would benefit from the C and I Department due to her background experience (military and adult training and business) and her future aspirations to continue in these fields.

OCR determined that the stated reasons are legitimate, non-discriminatory reasons.

Pretext for Retaliation

In the final step of the analysis, OCR must determine whether the reasons given by the University are the "true" reasons, which motivated the University in its action or are a

pretext for retaliation. Where the University provides more than one reason for its action, OCR must determine whether an impermissible factor of retaliation played a motivating role in the adverse action. OCR must then determine whether the University would have made the same decision with regard to the complainant absent consideration of the impermissible factor.

The complainant contends that she was retaliated against by University professors and administrators in her attempt to become a doctoral candidate in the College of Education's C and I Department because of her participation in previous activities. According to the complainant, this retaliation is demonstrated through the following actions.

- The C and I doctoral committee denying her admission when her credentials were comparable to other C and I doctoral applicants.
- Denying her admission to the doctoral program due to her lack of background in providing instruction in kindergarten through twelfth grade (K-12) curriculum, when others were admitted without this background.
- Providing the complainant with a "Certificate of Admission" from the Graduate School on November 1, 2000 and then subsequently being notified on November 3, 2000 that she was not admitted to the C and I doctoral program.

Doctoral Intake Committee

OCR interviewed members of the doctoral selection committee to determine each individual's assessment of the complainant's application to the C and I Doctoral Program and whether there is any pretext for discrimination against the complainant. Additionally, OCR interviewed University administrators involved with the selection process.

Through interviews with University staff, OCR established that the process for applying to the C and I Doctoral Program is as follows.

- * A student is expected to apply with the Graduate School for admission as the first contact. On occasion, the student will talk to the Department to discuss possible admission into a specific program before contacting the Graduate School. The Graduate School evaluates the application materials (including official transcripts) and prepares the Admission Referral form, which is sent to the Department (along with a copy of the application and official transcripts). The Department then reviews the materials received from the Graduate School (along with other Department materials required) and forwards their recommendation to the Graduate School. Circumstances vary for each student since not all students follow the same process. For example, the student may have a break in the program and require re-admittance, the student may be accepted conditionally pending receipt of official transcripts, the student may decide to change from "undeclared" or "non degree" status to regular

status, or the student may be admitted provisionally due to low GPA scores. After the Department signs and returns the Admission Referral form, a computerized Certificate of Admission form is then generated by the Graduate School. The original is sent to the student and a copy to the Department. It is not uncommon for departments to accept a student, contingent upon taking course deficiencies or a qualifying exam.

- Criteria for "regular" classification includes: a) a beginning graduate student who has either an overall 3.0 GPA or a 3.0 GPA in the last half of the undergraduate work; b) a continuing graduate student who maintains at least a 3.0 GPA in graduate courses; and c) a beginning foreign graduate student who has an overall 3.0 GPA, a bachelor's or master's degree from a U.S. institution, and no English-language deficiencies.
- Students who have not decided on a specific graduate department or program (or have not been accepted into a graduate program), but who have an undergraduate GPA of at least 2.5 may request consideration for admission to the Graduate School under the status of "undeclared." A student may also register with the Health and Social Services College as "non-degree" and take graduate classes without being accepted into any graduate program. Both "undeclared" and "non degree" registered students may enroll for graduate classes without being accepted into any graduate program (with the condition that no more than 9 hours of graduate credit may be transferred into a degree program).
- The C and I Department procedures stipulate that admission to the Graduate School and the Department does not automatically admit a student to the doctoral program. Final admission to the doctoral program is contingent upon the decision of the Doctoral Qualifying Committee, who will determine which students will most benefit from the program and research interests. The Qualifying Committee will evaluate the student's portfolio and conduct interviews with candidates to determine if the student's interests are aligned with the Department's goals and objectives. At least two Committee members are responsible for reviewing the materials of the candidate and at least four faculty members need to be present during the oral interviews.
- The questions asked by the Doctoral Qualifying Committee included the following: information on the candidate's interests; background; purpose for studying for doctorate; final degree sought (Ph.D. or Ed.D); portfolio clarifications; and other related areas. The student is then extended an opportunity to query the faculty. The examination was reported to last between 10 to 15 minutes for each candidate. Both the complainant and the doctoral intake committee members corroborated this.
- The Committee meets immediately following the interview to discuss and determine the acceptance or non-acceptance of the candidate into the doctoral program. Following a decision, the document entitled, "Results of the Doctoral Intake" is sent to the Graduate School, with signatures by Committee members and a letter is sent

by the C and I Department to the student notifying them of the Department's decision.

By reviewing records submitted by both the complainant and the University, OCR established the following chronology:

- Fall Semester 2000 – Complainant enrolls in two courses: EDLT 573 and EDLT 610 as an “undeclared” student. A review by the Associate Dean established that the complainant was eligible to enroll in these courses due to her “undeclared” status and her admittance into the Graduate School prior to the fall of 2000.
- October 2000- complainant informs the Graduate School of her interest to become a doctoral candidate in the C and I Department in the College of Education.
- October 15, 2000 – C and I Department's deadline for submission of portfolio and doctoral application materials.
- October 19, 2000 – the Graduate School forwards an Admission Referral to the Department Head of the C and I Department. The C and I Department received this document on October 24, 2000.
- October 23, 2000 – the complainant participates in the qualifying examination with the C and I Doctoral Intake Committee. On this same date the Committee reaches the conclusion that the complainant should not be admitted into the C and I doctoral program and should discontinue her graduate work with the department. A notice is sent to the Graduate School indicating this and is received by the Graduate School on November 1, 2000.
- October 31, 2000 the C and I Department approves the complainant's acceptance into the Graduate School and recommends admission into the C and I Department with the contingent condition that the complainant needed to take the qualifying examination. The Associate Professor who approved the complainant's acceptance into the Graduate School, with contingencies, was not involved in the examination on October 23, 2000.
- November 1, 2000 the Graduate School issues a Certificate of Admission to graduate studies at the University to the complainant.
- November 3, 2000, the C and I Department issues a letter to the complainant informing her that she was not accepted into the C and I doctoral program.

In interviews with doctoral intake committee members, all committee members described the complainant as having a background that was different from all the other candidates interviewed at the time. Specifically, committee members commented that the complainant did not describe any experiences in Kindergarten through Twelfth grade (K-12) educational instruction, which they believed to be the focus of the C and I

Department. Committee members indicated that the complainant's behavior during the interview was appropriate and did not negatively impact their decision. Committee members commented that the complainant's prior experiences included a business and military training background, which was different from all other applicants who demonstrated a K-12 educational instruction background. All committee members recalled the complainant's future interests revolving around adult and military training programs and business.

On page 65 of the University's Graduate School Catalog for the 2000-2001 academic year, OCR established that the C and I Department included the following in their discussion of graduate degree programs.

Three years of teaching experience or the equivalent is required for admission to doctoral programs in curriculum and instruction.

During interviews, OCR explored whether prior interactions relating to complaints filed by the complainant against the University was the cause of the action taken against the complainant. Through interviews, selection committee members indicated that none of them had any negative interactions with the complainant prior to reviewing her application and interviewing her for the doctoral position. Additionally, all committee members stated that they were unaware of any prior complaints filed by the complainant against the University at the time of the doctoral application to the C and I Department. As a result, there was no discussion of the complainant's previous complaints in the deliberation process following the complainant's interview. Additionally, committee members stated that no outside party (University administrators such as the Department Head, Dean of the Graduate School, Dean of the College of Education, Vice President, or President of the University) intervened in the committee's deliberations of whether to select the complainant as a doctoral candidate.

OCR reviewed the applications for all applicants to the doctoral program in the C and I Department during the Fall 2000 semester. OCR learned that there were eight other applicants to the doctoral program in the fall of the 2000-2001 academic year. These candidates were also female, five were white and three were Hispanic. OCR determined that each of these candidates demonstrated experience in K-12 educational instruction as described by the selection committee members. K-12 teaching experiences for the candidates ranged from 4 to 22 years, with the average number of years of experience being 10.5 years. Also, all other candidates had Masters Degrees in an education-related field (e.g., Education, Curriculum and Instruction, Bilingual Education, Spanish, and Special Education). The complainant possesses a Masters in Business Administration and had no record of K-12 teaching experience.

Accepted applicants who did not have K-12 instructional background

The complainant provided OCR with the names of seven applicants to the C and I doctoral program, which she believed were admitted into the doctoral program without a K-12 educational instruction background. Data from the University established that three

of these individuals were indeed accepted into the C and I doctoral program, the remaining four were not. Additionally, OCR learned that the three who were accepted were not applicants during the same period of intake as the complainant. Specifically, a different selection committee examined the three accepted applicants in April 1998, April 1999, and November 1999. However, the University established that the application process and criteria was the same for these applicants as it was for the complainant. OCR confirmed this by reviewing Graduate School Catalogs for school years 1997-98, 1998-99, and 1999-2000. OCR also reviewed the applications and background documents for these applicants. OCR was able to establish that two of the applicants demonstrated experience in the K-12 educational setting. The third applicant, who was accepted in November 1999, had no demonstrable experience in K-12 education. OCR investigated the C and I Department's acceptance of this applicant and any reason(s) given for his acceptance.

According to the University, the applicant who was accepted in November 1999 did have the equivalent experience of teaching in the K-12 educational setting. Specifically, this applicant worked in a county agricultural extension office that developed curriculum for local school districts. The applicant served in this position from 1988-1999 and provided the C and I Intake Committee with examples of curriculum he developed. The age range of students that the applicant worked with was 14 to 18 years of age, ages that are similar to the students other applicants provided instruction to in a K-12 educational setting. In comparison, the complainant did not identify any instruction she provided to students in the same age range and only described instructional situations in the business or military setting. Based on this explanation and OCR's review of records, OCR determined that the three applicants identified by the complainant were not similarly situated to the complainant and further analysis could not be conducted.

Change in treatment after notifying the complainant of acceptance

The complainant's initial basis for filing this complaint was caused by the receipt of a letter dated November 1, 2000 from the University's Associate Dean of the Graduate School identified as a Certificate of Admission. Subsequently, the complainant received a letter from the C and I Department Head and Co-Chairpersons of the Doctoral Intake Committee dated November 3, 2000, informing the complainant that she was not accepted into the C and I doctoral program.

The complainant believed the November 1, 2000 letter to be her acceptance to the C and I program following her October 23, 2000 interview with the C and I Doctoral Intake Committee. Although the University acknowledges that it initially appears contradictory that the complainant received a Certificate of Admission but was not accepted into the C and I Department, the University contends that the University's Graduate Catalog for the 2000-2001 academic year clearly explains that this is a possibility.

OCR reviewed the 2000-2001 Graduate Catalog, which states the following with regard to admission on page 11.

A person with a master's degree (or its equivalent) must have a graduate grade-point average of 3.0 to be considered for admission to a doctoral program. Admission to the Graduate School is no guarantee that the student will ultimately be accepted as a doctoral candidate, since the latter depends upon meeting the individual requirements of the degree granting departments, as well as the requirements of the Graduate School.

OCR reviewed University correspondence generated for other applicants to the doctoral program in C and I at the same time as the complainant to determine whether she was treated differently than other applicants. OCR's review of University records established that the eight other applicants received similar letters as the complainant. Specifically, each applicant received a Certificate of Admission and a letter from the Department Head and Co-Chairpersons of the Doctoral Intake Committee informing them that they had been admitted to the doctoral program. For all applicants the letters from the Department Head and Co-Chairs were dated November 3, 2000. Dates on the Certificate of Admission varied for each candidate.

Conclusion

OCR was unable to establish a pretext for discrimination by the University. OCR specifically determined the following.

- That all applicants were subject to the same conditions of acceptance as the complainant;
- that those applicants who were selected as doctoral candidates on November 3, 2000 did have educational experience in K-12 instruction and the complainant did not;
- that committee members responsible for denying the complainant's doctoral application had no established reason to retaliate against the complainant;
- that the complainant was aware of her responsibility to be interviewed by the C and I doctoral intake committee for acceptance to a doctoral position as evidenced by her submitted portfolio and her examination by the committee on October 23, 2001;
- that no influence was exerted upon the selection committee by University administrators to ensure that the complainant was not selected as a doctoral candidate;
- that there were no applicants similarly situated to the complainant to establish a finding of different treatment; and
- that the "Certificate of Admission" letter was not a guarantee of acceptance into the C and I doctoral program.

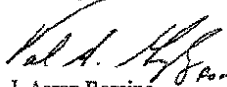
Accordingly, OCR determines that there is insufficient evidence to support a finding of violation. Therefore, OCR could not find evidence to support the allegation of retaliation and we are closing this case effective the date of this letter. This letter addresses only issues discussed above and should not be interpreted as a determination of the University's compliance or noncompliance with Title VI, or any other regulation.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, we will seek to protect, to the extent provided by law, personal information, which if released could constitute an unwarranted invasion of privacy.

Individuals filing a complaint or participating in an investigation are protected by Federal law against harassment, retaliation, or intimidation under 28 C.F.R. Section 35.134 and 34 C.F.R. Section 104.61 as it incorporates 34 C.F.R. Section 100.7(e). Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request we will seek to protect to the extent provided by law, personal information, which, if released, could constitute an unwarranted invasion of privacy.

This concludes OCR's investigation of this complaint. We wish to thank University staff for their assistance in this matter. We particularly want to thank Ms. Elva Telles and her staff for their assistance throughout this case. Additionally, we would like to thank Dr. Herman Garcia and his staff for their assistance. If you have any questions regarding this or other civil rights matters, please feel free to contact me at (303) 844-4568 .

Sincerely,


J. Aaron Romine
Supervisory Team Leader

cc: Elva G. Telles, Director
EEO/ADA and Employee Relations