



U.S. DEPARTMENT OF EDUCATION

P.O. BOX 14620
WASHINGTON, DC 20044-4620
e-mail: DCR_DC@ed.gov

OFFICE FOR CIVIL RIGHTS
SOUTHERN DIVISION

DISTRICT OF COLUMBIA OFFICE
District of Columbia, North Carolina, Virginia

OCT 30 2000

Dr. Richard R. Eakin
Chancellor
East Carolina University
East Fifth Street
Greenville, North Carolina 27858-4353

RE: OCR Complaint No. 11-00-2075

Dear Dr. Eakin:

This letter is to inform you of the disposition of the above-referenced complaint that was filed on May 5, 2000, with the District of Columbia Office of the Office for Civil Rights (OCR), U.S. Department of Education (Department), against East Carolina University (the University) by Shaun M. Foran (the Complainant). The Complainant alleged that the University discriminated against him on the basis of sex because students enrolled at the University verbally and physically harassed him and the University failed to take appropriate action.

OCR has responsibility for enforcing Title IX of the Education Amendments of 1972, 42 U.S.C. § 1681 *et seq.* (Title IX), and its implementing regulation, 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex by recipients of Federal financial assistance. The University is a recipient of such assistance from the Department and must comply with Title IX and its implementing regulation.

The Title IX regulation, at 34 C.F.R. § 106.31(a), provides that no person shall, on the basis of sex, be subjected to discrimination under any academic or other education program or activity offered by a recipient. Section 106.31 prohibits a recipient from subjecting any person to separate or different rules of behavior, sanctions, or other treatment and from otherwise limiting any person in the enjoyment of any right, privilege, advantage, or opportunity on the basis of sex.

The Complainant alleged that because he was an Art major, slight of build, and quiet and was not enrolled in ROTC, his roommate and several of his roommate's friends (the Students) called him names such as "queer," "gay," and "fag," on several occasions; forced him to wrestle with them, which caused bruises, scratches, and rug burns over his entire body; destroyed one of his art projects; and deleted one of his English papers from the computer. The Complainant alleged that these incidents began at the start of the 1998-99 academic year. The Complainant also alleged that the Students continued the name-calling and harassing behavior through the fall of the 1999-2000 academic year.

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

Title IX does not prohibit discrimination on the basis of sexual orientation. However, Title IX does protect all students, regardless of actual or perceived sexual orientation, from discrimination based on sex. Sexual harassment is a form of sex discrimination prohibited by Title IX. Sexually harassing conduct may include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. The conduct described by the Complainant does not include conduct of a sexual nature. Thus, OCR finds insufficient evidence that the other students sexually harassed the Student.

However, Title IX also prohibits acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex, but not involving conduct of a sexual nature. The Complainant is alleging that he was harassed based on sex because he was perceived by other students as not conforming to the behavior or mannerisms of a stereotypical male college student.

OCR will find the University responsible under Title IX for harassment based on sex if the harassing conduct was sufficiently severe, persistent or pervasive to create a hostile environment in the University's program or activities and the University knew or should have known of the harassment. In such a case, the University would be required to take immediate and appropriate corrective action. In this case, the University knew of the alleged harassment and undertook an immediate investigation. However, the Complainant did not raise the harassment in the context of gender, and the University considered his allegations as related to personal disagreements the Complainant and his roommate were having. We have reviewed the University's investigation and conducted our own, which did examine the alleged harassment from the perspective of sex discrimination. We have concluded that the University's investigation was appropriate, given the allegations as the Complainant raised them, and that the evidence did not show the existence of a hostile environment based on the Complainant's sex. Thus, OCR finds insufficient evidence to find that the University maintained such an environment in violation of Title IX.

According to the Complainant's father, he had contacted the office of the Dean of Students of the University in October 1998 to express his concerns about the incidents between his son and the Students. However, according to the University, there was no record of the telephone call. The University does acknowledge receiving such a call the following month.

The Complainant informed OCR that he told his dormitory Floor Residence Advisor and the Dormitory Advisor at the beginning of the 1998-1999 academic year that the Students were calling him inappropriate names like "queer," "gay," and "fag." The Complainant stated that even though he reported the incidents to dormitory staff, the University did not take corrective action to stop the harassment and name calling by the Students. The Complainant's former Dormitory Advisor informed OCR that neither the Complainant nor the Floor Residence Advisor reported any incidents to her. She stated that she found out about the incidents in November 1998, when the Complainant's father called.

The Complainant and the University agree that in a telephone conversation on November 16, 1998, between the Complainant's father and the Assistant Director of Residence Life for Judicial and Special Projects, the Complainant's father informed the University that his son was being harassed and physically assaulted by his roommate and one of his friends and that the harassment had been going on since the beginning of the 1998-1999 academic year.

Based on the November 16, 1998, telephone conversation with the Complainant's father, University officials determined that because of a safety concern the Complainant and his roommate should be moved to "hold" rooms pending the outcome of the University's investigation. In information provided to OCR by the Associate Dean of Students, Judicial Coordinator, the Complainant's father then called the Dean of Students on November 16, 1998, to express his concerns that his son was being moved to a "hold" room.

According to the University, a "hold" room is a room reserved by Housing to be used in case of an emergency. It is standard procedure, when an allegation implicating the safety of students is raised, to move the student to a "hold" room pending investigation.

In this case, both students were moved to "hold" rooms in different dormitories on November 16, 1998. According to the University, after the Complainant was moved to a "hold" room, he requested that he be moved into another residence hall. In response to the Complainant's request, a room was made available to him in another residence hall on November 18, 1998, but the Complainant chose not to move until November 21, 1998. In contrast, the Complainant told OCR that he was "detained" in this "hold" room for one week. After the Complainant moved into another residence hall, the Complainant's roommate was allowed to move back into their original room.

After reviewing the information provided by the Complainant and the University regarding when the University knew about the Complainant's allegations, OCR has determined that the earliest it can be established that the University first learned of the Complainant's allegations was on or around November 16, 1998. Although the Complainant and his father allege that the University was notified at the beginning of the semester, they were unable to provide documentation of any earlier conversations they had with representatives of the University.

The University began its investigation of the Complainant's allegations on or around November 17, 1998. A meeting had previously been scheduled for November 17 in response to a November 12 complaint from the Complainant's roommate regarding the Complainant's hygiene and cleanliness. At this meeting, the Associate Dean of Students, Judicial Coordinator interviewed the roommate regarding the Complainant's allegations.

According to University records, in a telephone conference call held on November 18, 1998, with the Complainant, the Associate Dean of Students, Judicial Coordinator, and the Assistant Director of Residence Life for Judicial and Special Projects, the Complainant's father informed the University that his son had received bruises and

scratches on his body during the Fall Break and that his son was afraid of the Students. The Complainant's father also informed the officials that he had taken pictures of his son's bruises and scratches and that the pictures had been sent to his attorney. The University requested copies of the pictures; however, according to the University, the father never submitted them to the University. University records reflect that, during the telephone conference, the Complainant informed the University officials that the Students "harassed" him into wrestling matches by calling him names. He stated that he often received bruises. The Complainant also stated that the students threatened to "trash" his car if he told how he received the bruises and scratches. He stated that while he was wrestling with another student, one of his roommate's friends joined in and "beat the crap out of him." According to the University, on the call the Complainant stated that he had not previously reported this "beating" to his Residence Advisor or any University officials. The Complainant also alleged that the Students had destroyed one of his art projects and deleted one of his English papers from the computer.

The University interviewed the Resident Advisor and the students identified by the Complainant as witnessing wrestling incidents between him and the Students. The information provided by the University to OCR indicates that in the interviews with students identified by the Complainant, the students stated that there was a lot of wrestling among students generally and the Complainant, when he was involved, usually "got the worst of it." However, the University official who conducted the interviews stated that no student could confirm that the Complainant requested the Students to stop.

The Dormitory Advisor told OCR that the Floor Residence Advisor informed her that he had seen the Students and the Complainant "horseplaying" in the dormitory and asked them to stop. However, she could not recall when she was told this. The University could not provide OCR with the telephone number or address of the Floor Residence Advisor because he is no longer attending the University. OCR also interviewed a student identified by the Complainant as witnessing the wrestling incidents. The witness confirmed that the incidents occurred as reported by the other witnesses interviewed by the University. The witness, when asked, did not provide confirmation to OCR that the Complainant requested the Students to stop.

The Complainant stated to OCR that the Students destroyed an art project and English paper. In investigating this allegation, OCR interviewed the Complainant, who stated that he did not report the incidents to his teachers or ask for extensions to complete the work. He was unable to explain to OCR why he did not report this. In a telephone interview with the Dean, Undergraduate Studies, the Dean told OCR that she had interviewed the Complainant's teachers regarding his allegations that the Students destroyed his art project and English paper. She also confirmed that the Complainant did not inform his teachers of the incidents or request extensions to complete the work. Thus, there was not enough evidence for OCR to be able to determine if the incidents occurred. Moreover, as the Complainant acknowledges, he did not report these incidents to the University and therefore it was not in a position to look into them or take corrective action.

The Complainant informed OCR that the Students called other University students the same types of inappropriate and offensive names that they called the Complainant. He was unable to state to OCR that he was singled out by the Students for that type of name-calling. Both University staff and students confirmed to OCR that the Students did harass and call other students such inappropriate and offensive names and that one of the Complainant's roommate's friends used an offensive gender-oriented term on the corridor casually and indiscriminately with both males and females.

The University informed OCR that, after investigating the Complainant's allegations, the University determined that there was no evidence that the behavior of the Students was maliciously directed toward the Complainant. The wrestling and the language may not have been appropriate, but many of the male students on the hall were subjected to the Students' comments and actions. The University also told OCR that the complaint was not formally closed at the end of its investigation. Because the Complainant's allegations were being simultaneously investigated by several University entities, OCR was unable to determine when the investigation was concluded. However, the evidence does show that the University responded to the Complainant's concerns promptly. The Associate Dean of Students, Judicial Coordinator told OCR that she did not close the complaint in case the Complainant reported any further incidents with the Students. The University informed OCR that after the Complainant and his roommate were separated, the Complainant reported no further incidents.

The Complainant informed OCR that the Students continued the name-calling and harassing behavior until the Complainant was suspended from the University for academic reasons at the end of the Fall 1999 academic year. However, according to documentation received from the University and interviews with University officials, the Complainant did not notify the University of any such incidents. In an interview with the Complainant he informed OCR that he did not report any further incidents to the University, and he did not explain why he did not do this.

In summary, the University took prompt and appropriate action to resolve the complaint by separating the Complainant and his roommate to ensure their safety and by interviewing the Complainant, his roommate, and other witnesses. The evidence gathered by the University during its investigation, and by OCR during our investigation, was insufficient to support a finding that the conduct of the Students toward the Complainant amounted to gender-based discrimination. Specifically, because other male students, including those who did meet the traditional image of a male college student, were subjected to the same treatment, the conduct cannot be said to have been based on the Complainant's gender.

In finding insufficient evidence, OCR is not condoning the alleged conduct of the Students. Rather, OCR has determined that the University fulfilled its obligation by taking immediate steps to address the situation raised in the Complainant's allegations. OCR, however, encourages the University in its future complaint investigations to designate one person to coordinate all aspects of the investigation and to document the steps in investigating and resolving each complaint.

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This concludes OCR's consideration of the allegations, and we are closing the complaint effective the date of this letter. This determination letter addresses only the issues discussed herein and should not be construed to cover any other issues regarding compliance with Title IX.

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

We have notified the Complainant that the University may not harass, intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the laws OCR enforces, or because one had made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under the laws OCR enforces. If any individual is harassed or intimidated because of filing a complaint or participating in any OCR investigation, the individual may file a complaint with OCR alleging such harassment or intimidation. If you have any questions, please contact Janice Alexander, the assigned Investigator, at (202) 208-7670.

Sincerely,



Sherilyn Goldbecker
Team Leader

cc: Taffye Benson Clayton, Assistant to the Chancellor for Special Assignments
and E.E.O. Officer