



U.S. DEPARTMENT OF EDUCATION
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OFFICE FOR CIVIL RIGHTS
SOUTHERN DIVISION

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

January 7, 2005

Dr. John Dempsey
President
Sandhills Community College
3395 Airport Road
Pinehurst, North Carolina 28374

RE: OCR Complaint #11-04-2077

Dear Dr. Dempsey:

The District of Columbia Office, Office for Civil Rights (OCR), within the U.S. Department of Education (Department), has completed its investigation of the above-referenced complaint filed by (b)(7)(C) (Complainant), against Sandhills Community College (the College), in Pinehurst, North Carolina. In the complaint, the Complainant alleged that the College discriminated against him on the basis of his gender (male). Specifically, the Complainant alleged that the College subjected him to different treatment in that he was dismissed from the Associate Degree Nursing Program during the 2004 Summer Semester, for failing to pass a mathematics examination with a 100% score, while a female student who also did not score 100% on the same examination was not dismissed from the nursing program.

OCR initiated resolution efforts in this case pursuant to its enforcement authority under Title IX of the Education Amendments of 1972, (Title IX), and its implementing regulation at 34 C.F.R. Part 106. Title IX prohibits discrimination on the basis of sex in education programs and activities that receive or benefit from Federal financial assistance from the Department. The College is a recipient of Federal financial assistance from the Department, and therefore, is subject to the provisions of Title IX and its implementing regulation.

In reaching a determination of the issue herein, OCR reviewed relevant information provided by both the Complainant and the College. OCR also conducted interviews with the Complainant, College staff and other relevant individuals. OCR's analysis and conclusions with respect to the issue contained in the complaint is as follows:

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

Background

The Complainant transferred to the College during the Fall of 2002. The Complainant initially enrolled into the College's Associate Degree Nursing Program during the Fall of 2003. The Complainant was enrolled in Nursing 130 (NUR 130), a prerequisite course, during the Summer 2004 semester.

On May 27, 2004, the Complainant took the first required calculation test for NUR 130. Based on his score, the Complainant was required to take a second test. On June 2, 2004, the Complainant took the first retest. Based on his score, the Complainant was required to take the second retest. On June 4, 2004, the second retest was administered to the Complainant. Seven of the nine students who took the second retest received a 100% passing grade. Two students, the Complainant and a female student did not receive a 100% passing grade. Because the Complainant did not pass the second retest he was permitted to continue with the classroom portion of the course, but could not continue in the clinical setting. The NUR 130 syllabus requires a score of 100% on this exam, testing dosage calculations, in order for a student to participate in the clinical portion of the class.

Thereafter, the Complainant filed an informal grievance with the Dean of Instruction on June 14, 2004, challenging the College's decision to not allow the Complainant to perform in the clinical setting. The Dean of Instruction forwarded the Complainant's formal grievance to the Student Affairs Committee (Committee) on June 21, 2004. The Committee's decision is discussed below.

Different Treatment

The regulation 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 education program or activity operated by a recipient which receives or benefits from Federal financial assistance. The regulation at 34 C.F.R. § 106.31(b) states that a recipient shall not, on the basis of sex, treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or subject any person to separate or different rules of behavior, sanctions, or other treatment.

In order to determine if different treatment has occurred, OCR must first determine whether there is an initial or *prima facie* case of discrimination. This includes determining whether 1) the Complainant is a member of a protected class; 2) whether the Complainant was treated adversely by the College; and 3) whether other, similarly situated persons of a different gender were treated better. If a *prima facie* case is established, a determination is made as to the reason(s) for the apparent different treatment. Specifically, OCR determines whether the College has offered a legitimate, nondiscriminatory basis for the different treatment and whether that explanation is a pretext or excuse for discrimination.

The Complainant alleged that he was treated differently on the basis of gender by being dismissed from the nursing program for failing to pass a mathematics examination with a 100% score, while a female student who also did not score 100% on the same

examination was not dismissed from the program. However, the evidence shows that the Complainant was not dismissed from the program. Rather, as stated above, because he did not receive a 100% on the exam, he was not allowed to participate in the clinical portion of this particular class. Thus, OCR's investigation focused on whether the Complainant was treated differently on the basis of gender in not being allowed to take the clinical portion of NUR 130. With regard to this allegation, OCR notes the following:

First, the Complainant is a member of a protected class, that is, he is a male. Second, the Complainant was treated adversely in that he could not progress to the clinical setting for the NUR 130 class. Thus, the first two elements of the *prima facie* standard have been established.

Third, other similarly situated persons of a different gender were not treated better than the Complainant. The record reflects that two students, the Complainant and a female student, did not receive a 100% passing grade on the second retest. The record further reflects that upon completion of the second retest, the professor who administered this test concluded that both the Complainant and the female student had made errors on their respective examinations. At that time, the professor returned the test to the female student and requested that she reread the question in which she had made the error. According to the College, the female student immediately was able to provide the correct solution to the problem and, as a result, received a score of 100% on the examination. The record reflects that the professor also returned the Complainant's test to him and requested that he reread the questions to which he responded incorrectly. During a telephone conversation with the Complainant on September 13, 2004, the Complainant confirmed that he was, in fact, provided an opportunity to correct his examination. During a December 13, 2004, interview, with the professor, she noted that the Complainant was able to correct one problem which he had answered incorrectly, but was not able to resolve another. He ultimately received a score of 80% on his examination. Subsequently, a determination was made by College staff that as a result of the examination scores, it was appropriate for the female student to continue in the clinical setting but inappropriate to permit the Complainant to perform in the clinical setting. Therefore, the third element of the *prima facie* case has not been established because other similarly situated persons of a different gender were not treated better than the complainant and OCR need not consider whether the College had a legitimate, nondiscriminatory reason for refusing to allow him to complete the clinical portion of the class. However, even assuming that the elements of the *prima facie* case had been satisfied, the College has provided a legitimate, nondiscriminatory reason – namely, that accuracy in dosage calculation is essential to safe participation in the clinical setting. OCR also concludes that this reason is not a pretext or excuse for discrimination, as discussed below.

OCR notes that the Complainant filed an informal grievance with the Dean of Instruction on June 14, 2004, challenging the College's decision not to allow the Complainant to perform in the clinical setting. On June 17, 2004, the Dean of Instruction informed the Complainant that there was no evidence of gender discrimination and that the decision made by the NUR 130 course instructional team was appropriate. The record reflects that the Complainant filed a formal grievance, which the Dean of Instruction forwarded to the Student Affairs Committee (Committee) on June 21, 2004.

Following its investigation, the Committee determined that the Complainant had not been subjected to gender discrimination. However, the Committee noted that the Nursing Department did not follow its own academic procedures as specified in the NUR 130 course syllabus.¹ Thereafter, the Committee reported its findings to the President and Vice President for Instruction. The President directed the Nursing Department to allow the Complainant and the female student to take another dosage calculation module test. The President further indicated that if the Complainant were successful in passing the dosage calculation module test, he would be permitted to make up the missed clinical activities in order to complete NUR 130 prior to the beginning of the Fall 2004 semester. The President further directed that the retest process should not negatively impact the female student who had been successful in the clinical setting. Interviews with College officials on December 13, 2004, indicated that this was because the female student had already successfully completed her clinical activities by the time of the third retest; OCR finds to be a nondiscriminatory explanation for any difference in treatment between the Complainant and the female student. On July 26, 2004, the College administered the third retest. Neither student scored 100% on this examination.

With respect to grading, while not part of the allegation, OCR notes that the Complainant elected not to take the final examination for the classroom portion for NUR 130 and received a score of 0%. The Complainant received a grade of "F" for the course. The record further reflects that the female student took the final examination for the classroom portion of NUR 130 and received a score of 90%. The female student received a grade of "B" for the course. OCR also notes that of the 47 students that completed the Summer 2004 semester of Nursing 130, 41 were female and six were male. Moreover, the Complainant was the only student who received a failing grade for the course. Although the female student did not score 100% on the July 26 retest, she, unlike the Complainant, scored 100% on the second retest under similar circumstances as the Complainant. In addition, the female student satisfied all the requirements for the course and received a passing grade. The Complainant however, did not complete all the requirements for the course (as noted above) and received a failing grade.

Based on the above, OCR concludes that there is insufficient evidence to support the Complainant's allegation that the College subjected him to different treatment in that he was dismissed from the Associate Degree Nursing Program during the 2004 Summer Semester, for failing to pass a mathematics examination with a 100% score, while a female student who also did not score 100% on the same examination was not dismissed from the nursing program. The evidence established that the Complainant was permitted to continue to take classes but could not progress to the clinical setting of the program because unlike the female student identified above, he did not pass the second retest with a score of 100% and the Complainant did not complete all the requirements for the course and received a failing grade.

¹ The NUR 130 syllabus states, in pertinent part, that "...the student should successfully complete the pediatric clinical skills module and dosage calculations module...The student must achieve 100% on the dosage calculation module test...The student will not be permitted to administer medications if the score is less than 100% on the dosage calculation module re-test...A student may take the module test/re-test a total of three times.

Page 5 - Dr. John Dempsey, President, OCR Complaint #11-04-2077

This concludes OCR's investigation of discrimination raised in the complaint filed with OCR. OCR's determination is limited to the issues referenced herein and should not be construed to address or apply to any issues not expressly referenced herein. Therefore, this complaint is being closed effective the date of this letter.

The College is reminded that no person or persons may intimidate, threaten, coerce, or otherwise discriminate against any individual for the purpose of interfering with any right or privilege secured by the laws OCR enforces, or because one has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the laws enforced by OCR. If anyone is harassed or intimidated because of filing a complaint with or participating in an OCR investigation, the individual may file a complaint with OCR alleging such harassment or intimidation.

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, personally identifiable information which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions regarding this matter, please contact Tracey Solomon, at (202) 208-3657.

Sincerely,



Safiyah Muhammad
Team Leader - Team I
District of Columbia Office
Office for Civil Rights

cc: Dr. Richard E. Swanson, Dean of Instruction