



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
REGION I
JOHN W. MCCORMACK POST OFFICE AND COURTHOUSE, ROOM 701
POST OFFICE SQUARE
BOSTON, MASSACHUSETTS 02109-4557

FEB 21 2003

Dr. Dana Mohler-Faria
President
Bridgewater State College
Bridgewater, Massachusetts 02325

RE: Complaint No. 01-02-2057

Dear President Mohler-Faria:

On September 26, 2002, the Office for Civil Rights (OCR) notified the Bridgewater State College (College) that we had received a complaint filed by (b)(7)(C) (Complainant), alleging discrimination on the basis of race, color, and sex. More specifically, the Complainant alleged that the College failed to fully investigate her discrimination and harassment complaint against Dr. Frederick Tirrell (Professor) and his continuation, as a professor in the College's Certificate of Advanced Graduate Studies (CAGS) Educational Leadership program, barred her from accessing required graduate courses. Moreover, the Complainant further alleged that when she filed her initial verbal complaint, the Professor retaliated against her through a letter that accused her of speaking out and interrupting students in his class.

OCR accepted the Complainant's allegations because they fall within the jurisdiction of Title VI of the Civil Rights Act of 1964 and its implementing regulations (Title VI), which prohibit recipients of Federal financial assistance from discriminating against students on the basis of race, color or national origin. OCR is also responsible for enforcing Title IX of the Education Amendments Act of 1972 (Title IX) and its implementing regulations, which prohibit recipients of Federal assistance from discriminating on the basis of sex. As a recipient of Federal financial assistance from the U.S. Department of Education, the College is subject to the provisions of Title VI and IX.

Upon receipt of the complaint, OCR contacted the College and requested data and information related to the Complainant's allegations. We also conducted interviews with selected College administrators, faculty and the Complainant. Based on our analysis of the information, we have concluded that there is insufficient evidence to support a violation of Title VI and/or Title IX. The legal standards applicable to the Complainant's allegations and our conclusions are presented below.

Legal Standards

The standards for determining the College's compliance regarding the Complainant's allegations of discrimination on the basis of race and sex are set forth in the regulations implementing 34 C.F.R. §100.3(a) and (b)(1) and 34 C.F.R. §106.31(a) and (b), respectively, which provide that no person on the basis of race or sex, shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which this part applies. Once a recipient is aware of the alleged discriminatory conduct, it is obligated to take appropriate action to ensure compliance with Title VI and Title IX. Title IX, in particular, requires recipients to adopt and publish a grievance procedure providing for the prompt and equitable resolution of complaints alleging noncompliance with Title IX. *See 34 C.F.R. §106.8.*

College's Response to the Alleged Discrimination

In fall 2001, the Complainant re-entered the CAGS Educational Leadership program after she had withdrawn in 1996 under advice of the CAGS Coordinator, at that time, Dr. Carl Smith. On January 18, 2002, the Complainant attended the first class meeting of SA667 taught by the Professor. The Professor's class was her third class in the CAGS program, having previously enrolled in and completed two of the CAGS program's business courses. The Complainant alleged that, during the January 18th class, the Professor launched a series of hostile verbal interactions with her. In particular, the Complainant alleged that the Professor told her that she did not know what she was talking about, asked her a series of questions, and abruptly and repeatedly cut her off using verbal interruptions and offensive hand gestures.

The Complainant immediately wrote a letter of complaint, dated January 18, 2002, to Dr. Joanne Newcombe, the current CAGS Coordinator (Coordinator), describing, in detail, the Professor's interactions with her and other students in class. In the letter, she stated that the Professor's lack of sensitivity, crude and aggressive manner violated her right as a student to access higher education. The Complainant immediately withdrew from SA667. In her complaint to OCR, she specifically alleged that the College, subsequent to this incident, failed to fully investigate her discrimination and harassment complaint against the Professor. The Complainant further alleged that, as a result, she did not pursue required course work because of the Professor's involvement and ongoing presence in the CAGS program.

In order to resolve the allegations, OCR requested that the College provide relevant information and documents. In response to our data request, the College submitted its policies and procedures regarding informal and formal complaints of discrimination on the basis of race and sex; a narrative of the College's response to the incident, with supporting documentation; and information describing the College's diversity training and education programs for students, staff, faculty and administrators.

OCR reviewed the College's Discrimination Complaint Procedures (Procedures) and found them nondiscriminatory on their face. The College's Procedures are published and

available to students, employees, applicants for admission and/or employment, and others who believe they have been treated unfairly on the basis of race, color, national origin, sex, gender, religion, sexual orientation, age, marital or veteran status or disability. An individual may proceed with a complaint either informally or formally. Complainants who file an informal complaint, but who do not find the proposed resolution acceptable, may elect to proceed with a formal complaint with the College and/ or the appropriate local, state or federal agency. Formal internal complaints are filed with the Affirmative Action Officer. The College's Procedures establish time limits for the resolution at each stage with appeal options, up to the College President.

On January 23, 2002, the Complainant met with the Coordinator to discuss her complaint, which was then forwarded to the Dean of the School of Education and Allied Studies, Dr. Ronald Cromwell (Dean). Immediately following the Complainant's verbal complaint to the Coordinator, the Professor was informed that the Complainant had found his classroom uncomfortable and intended to withdraw. On January 28, 2002, the Professor wrote a letter to the Complainant in which he stated, "I regret and apologize if there was anything I did that made you feel [uncomfortable]," and invited the Complainant to discuss the matter with him. The Dean and Dr. Kathryn Lusteg, Associate Professor and Chair of the Secondary Education and Professional Programs (Chair), met with the Complainant on February 4, 2002, and on several occasions with the Professor. On February 6, 2002, the Complainant met with Dr. Allen Comedy, Assistant to the President, Affirmative Action/Minority Affairs and Equal Opportunity (Affirmative Action Officer) to discuss the Procedures and obtain his advice on the matter.

Subsequently, in a letter dated February 25, 2002, Dr. Lusteg reported to Dean Cromwell that she and the Professor had discussed the complaint and that the Professor took the complaint seriously, understood the Complainant's concerns and agreed that it is important for students to feel comfortable in the classroom. Dr. Lusteg indicated that she had met with and written the Professor regarding this matter and would work with him to monitor student evaluations. Dr. Lusteg also stated that the Professor planned to attend the Diversity Institute in June 2002. As a result, the Chair concluded the matter to be closed.

The Complainant did not find the letter from the Professor, or the Dean and Chair's resolution of the matter, sufficient to address her concerns. In addition, she found the Professor's letter retaliatory when he remarked that she spoke out of turn and for extended periods of time. As a result, the Complainant filed a formal complaint with the Affirmative Action Officer on March 20, 2002. The Professor submitted a rebuttal to the complaint on April 8, 2002, to which the Complainant responded on May 4, 2002. After reviewing both statements, Dr. Comedy investigated the Complainant's allegations by interviewing every student who had attended the January 18th SA667 class and by speaking with Dr. Carl Smith and Paul Wright, regarding an earlier controversy with respect to the Complainant's transfer out of the CAGS program in 1996. In addition, the Affirmative Action Officer reviewed the Professor's past class evaluations and enrollment data, with attention to racial composition of the classes and withdrawals.

On June 14, 2002, the Affirmative Action Officer issued a report, concluding that the Professor did not discriminate against the Complainant. Specifically, the Affirmative Action Officer found that the Professor had not acted with any discriminatory animus towards the Complainant, and that he treated all the students similarly without regard to race or sex. The report recommended that the Dean and Coordinator monitor and work with the Complainant closely during her enrollment in the CAGS program and that the Professor encourage class participation and foster faculty-student relations by using more theory, reading material and case studies.

On June 29, 2002, the Complainant requested that her complaint proceed to Step II under the Procedures' appeals process, which calls for a review by the Chief Administrative Officer having supervision over the Professor, in this case, Dr. Laurence Richards, Acting Vice President for Academic Affairs. On July 15, 2002, Dr. Richards submitted his report, concurring with the Affirmative Action Officer's findings and recommendations that no discrimination had occurred. Finally, on August 16, 2002, at Step III, Dana Mohler-Faria, the President of the College, reviewed the complaint and investigation report and concurred with the Affirmative Action Officer's and Acting Vice President's conclusions.

Based on the evidence and the discussion above, OCR determined that there was insufficient evidence to establish that the College failed to appropriately and promptly respond to the Complainant's allegations of race and sex discrimination. Furthermore, recommendations and monitoring by the Affirmative Action Officer were put into place to mitigate the Complainant's discomfort in the CAGS program and the Coordinator made efforts to provide for her successful completion. Therefore, OCR concludes that there is insufficient evidence to determine that the College violated Title VI and/or Title IX as alleged by the Complainant.

Claim of Retaliation

OCR uses a five-part test to determine whether retaliation has occurred. In order to prove retaliation:

- The complainant must have been engaged in a protected activity.
- The recipient must have been aware of the protected activity.
- The recipient must have taken adverse action against the complainant contemporaneously with or subsequent to the protected activity.
- There must have been a causal connection between the complainant's protected activity and the recipient's action.
- The recipient must be unable to show a legitimate, nondiscriminatory, nonpretextual reason for its action.

With respect to first prong, OCR concluded that the Complainant engaged in a protected activity when she wrote a letter of complaint to the Coordinator on January 18, 2002. OCR also concluded that the College was aware of the protected activity, as evidenced by the Coordinator's receipt of the complaint letter filed by the Complainant.

However, based on the information gathered during the investigation, OCR was unable to conclude that the Complainant was subjected to adverse action. OCR reviewed the January 28, 2002 letter written by the Professor, which the Complainant contends was retaliatory in nature, and was unable to conclude the letter qualified as adverse action. In the letter, the Professor apologizes and attempts to open up communication with the Complainant. Although the letter contains remarks by the Professor about class interactions involving the Complainant, his remarks were not sufficiently adverse to establish a claim of retaliation. Since there is no finding that the Complainant suffered adverse action, OCR need not address the remaining two elements of the retaliation analysis. Thus, OCR has determined that there is insufficient evidence to support the allegation that the Professor retaliated against the Complainant when he wrote the January 28, 2002 letter.

Conclusion

Based on the facts presented, OCR concludes that there is insufficient evidence to support a finding of a violation of Title VI and/or Title IX. Therefore, OCR will close the investigation of this complaint, effective the date of this letter.

Please be advised that this letter only addresses the matters discussed herein. It should not be construed to cover any other matter regarding the College's compliance with the regulation cited herein or with any other regulation for which we have enforcement authority.

OCR wishes to thank you and the College for assisting us in resolving this complaint. If you have further questions regarding this matter, please contact Frederick Dow, Senior Civil Rights Investigator, at 617.223.9663, or me at 617.223.9699.

Sincerely



Robert L. Picrec
Program Manager

cc: (b)(7)(C)