



U.S. DEPARTMENT OF EDUCATION
THE WANAMAKER BUILDING, SUITE 515
100 PENN SQUARE EAST
PHILADELPHIA, PENNSYLVANIA 19107

OFFICE FOR CIVIL RIGHTS

WENDELLA P. FOX
DIRECTOR
PHILADELPHIA OFFICE
EASTERN DIVISION

Our Ref: 03982042

MAR 24 1999

Dr. Lawrence Pettit
President
Indiana University of Pennsylvania
Sutton Hall
Indiana, Pennsylvania 15705

Dear Dr. Pettit:

This letter is to notify you of the determination by the Office for Civil Rights (OCR), U.S. Department of Education (the Department), of the complaint filed against the Indiana University of Pennsylvania (the University). The complainant alleged that the University discriminates on the basis of disability and sex. Specifically, the complainant alleged that University staff made derogatory comments regarding his disability. The complainant also alleged that University staff created a hostile environment when you filed a complaint of sex discrimination/sexual harassment. The complainant further alleged that the University discriminates against male students at the University by: (1) unevenly applying the sexual harassment policy in favor of females; (2) offering a course entitled Firearms Familiarize for Females and not allowing males to register; and (3) not having a sex discrimination policy.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation, at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in any program or activity receiving Federal financial assistance. OCR also has jurisdiction as a designated agency under Title II of the Americans with Disabilities Act (ADA) and its implementing regulation, at 28 C.F.R. Part 38, which prohibit discrimination against qualified individuals with disabilities by public entities. The University is a recipient of Federal financial assistance from the Department and is a public entity and is, therefore, subject to the provisions of Section 504, the ADA, and their implementing regulations. As OCR has determined that the applicable ADA regulation does not provide greater protection than the applicable Section 504 regulation, we have applied the Section 504 standards to this complaint.

OCR also has the responsibility for enforcing Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. Section 1681 *et. seq.*, and the implementing regulation at 34 C.F.R. Part 106, prohibits discrimination on the basis of sex in educational programs and activities receiving Federal financial assistance from the Department. The University is a recipient of such assistance and, therefore, is subject to the provisions of this statute.

In reaching a determination in this case, OCR conducted interviews with the complainant and University staff and reviewed data submitted by the complainant and the University. We have made the following determinations of fact:

- By letter dated March 6, 1998, to the University's Director of Public Safety, the complainant alleged that a University police dispatcher made sexual gestures with her tongue after he filed a criminal

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complaint. In his letter he also alleged that other University personnel made derogatory comments regarding his disability.

- The University's application for admission form included an inquiry as to whether the applicant has a disability. According to the University, the purpose of the inquiry was to obtain information regarding any accommodations that applicants would require, if accepted. The complainant listed two items in that section of the application form, spina bifida and an inoperable gunshot wound.
- Only one staff person had access to the complainant's application materials. That individual did not communicate any information contained in the complainant's application to other individuals because the complainant did not request any accommodations.
- Witnesses and documentary evidence failed to corroborate the complainant's claim that University staff made derogatory comments regarding his disability. Moreover, there were disparities with respect to information related to the alleged comments which was provided to OCR by the complainant himself.
- The University has established policies that expressly prohibit sexual harassment and discrimination on the basis of sex, as well as grievance procedures designed to handle sexual harassment complaints. The policies and procedures are published in the University's student handbook and distributed to all employees at an orientation session. The University also regularly conducts sexual harassment workshops, including eight workshops during the 1997-98 academic year.
- The complainant's allegation of sexual harassment/hostile environment was handled by the University in accordance with its sexual harassment grievance procedures. However, when the complainant was afforded the opportunity to provide a formal account of alleged harassment, he failed to do so. As a result, the University issued no official findings, but informed the complainant that he was not precluded from raising the allegation at a later time. There was no evidence to corroborate the complainant's claim that a University police dispatcher made sexual gestures toward him with her tongue after he filed a criminal complaint.
- The complainant knew of no other males who were subjected to the same or similar treatment or who could otherwise validate the complainant's assertion that males are subjected to differential treatment when filing complaints of sex discrimination/sexual harassment. Similarly, the complainant could not identify other males who could corroborate the complainant's claim that the University's sexual harassment and non-discrimination policies are applied less favorably with respect to male students. In addition, no other male student has filed a complaint of sexual harassment or sex discrimination against a University employee or with the University police within the past two academic years.
- The University offered a course entitled Firearms Familiarize for Females for the spring 1998 semester. Registration was open to both male and female students. Some male students, including the complainant, actually registered for the course. The course was later cancelled due to low enrollment.

A disabled person, under the Section 504 regulation at 34 CFR §104.3 (j)(1), is defined as any person who has a physical or mental impairment which significantly limits one or more major life activities. A qualified disabled person, with respect to postsecondary services, is defined as an individual with a disability who meets the academic and technical standards requisite to admission or participation in the recipient's education program or activity. 34 CFR §104.3(k)(3) OCR finds that the student is a qualified person with a disability within the meaning of Section 504. One of the student's stated disabilities, spina bifida, is generally recognized as a physiological disorder which substantially limits affected persons in major life activities.

With respect to the complainant's allegation that University staff made derogatory comments regarding his disability, recipients have a duty to provide a nondiscriminatory environment that does not interfere with or limit the ability of an individual to participate in or benefit from its programs or activities.

In the instant case, OCR found no evidence to support the complainant's claim that University employees made derogatory statements regarding his disability. We found that only one staff person was even aware of the complainant's disability. That staff person's function was to review application forms to determine if prospective applicants would require accommodations if accepted. Because the complainant did not request any accommodations, the staff person did not notify anyone about the complainant's disability. Moreover, information provided by the complainant himself revealed inconsistencies which cast doubt on the veracity of the allegations. Accordingly, OCR has determined that the evidence is insufficient to support a finding of a violation of the Section 504 regulation.

Regarding the complainant's allegation that University staff created a hostile environment when he filed a complaint of sex discrimination/sexual harassment, under the regulation implementing Title IX at 34 CFR §106.31, recipients may not discriminate against individuals on the basis of sex in education programs or activities. OCR generally defines "hostile environment" sexual harassment, as unwelcome sexual advances, requests for sexual favors, or other sexually based verbal or physical conduct that is sufficiently severe, persistent, or pervasive to have the effect of interfering with a student's education. When examining incidents of alleged sexual harassment, OCR considers whether: 1) the University has a policy prohibiting sex discrimination under Title IX and effective Title IX grievance procedures and 2) the University appropriately investigated or otherwise responded to the allegation.

We found that the University had established policies prohibiting sexual harassment and sex discrimination, and effective grievance procedures for sexual harassment complaints. We also found that the University's handling of the complainant's sexual harassment complaint was in conformance with its grievance procedures. OCR found no evidence to corroborate the complainant's claim that a University police dispatcher made sexual gestures toward him with her tongue. Moreover, OCR has determined that, even if the complainant's allegation was found to be true, the alleged conduct would not be sufficiently severe, pervasive and persistent as to constitute a sexual harassment hostile environment. Accordingly, we find that the evidence is insufficient to support a finding of a violation of the Title IX regulation with respect to this issue.

With respect to the complainant's allegation that the University discriminates against male students by not having a sex discrimination policy, we found the allegation to be untrue. The University has an established policy prohibiting discrimination on the basis of sex and several other bases. Accordingly, we find that the University did not violate the Title IX regulation with respect to this issue.

Regarding the complainant's allegation that the University unevenly applies its sexual harassment policy in favor of females, we found no evidence to support the complainant's assertion. Furthermore, the complainant could not identify other males who could corroborate his claim. In addition, the complainant knew of no other males who were subjected to the same or similar treatment that he alleged he was subjected to or who could otherwise validate his contention that males are subjected to differential treatment when filing complaints of sex discrimination/sexual harassment. OCR found that no other male student has filed a complaint of sexual harassment or sex discrimination against a University employee or with the University police within the past two academic years. Accordingly, we find that the evidence is insufficient to support a finding of a violation of the Title IX regulation with respect to this issue.

With respect to the complainant's allegation that the University discriminates against male students at the University by offering a course entitled Firearms Familiarize for Females and by not allowing males to register, we found the allegation to be untrue. We found that males students, including the complainant,

registered for the course. Thus we find that the University did not violate the Title IX regulation with respect to this issue.

During the course of this investigation, OCR found that the University's admissions application form requested personal data about disability. Such a pre-admission inquiry is prohibited by the Section 504 regulation at 34 CFR §104.42(b)(4), which states that, in determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient shall not make pre-admission inquiry as to the disability status of an applicant.

The University's admissions application form also requested personal data about race/ethnicity. The regulation implementing Title VI of the Civil Rights Act of 1964 (Title VI) has been interpreted by OCR to only allow pre-admission inquiries as to race/national origin if it is indicated that the provision of this information is made on a voluntary basis, and it is clearly stated on the application that the information will not be adversely used as a factor in the admissions process. OCR's examination of the University's application revealed that applicants are asked to identify themselves in terms of ethnic origin by checking the applicable box in one of six categories. The application does not indicate that the provision of this information is voluntary and that the information will not be used as a factor in the admissions process.

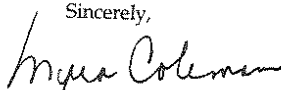
The University has agreed to undertake the actions outlined in the attached commitments to resolve this matter. As is our standard practice, implementation of the commitments will be monitored OCR.

This letter of findings is not intended, nor should it be construed, to cover any issues regarding the University's compliance with Section 504, Title VI and Title IX that may exist and are not specifically discussed herein.

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 that, if released, could constitute an unwarranted invasion of privacy.

If you have any questions, please do not hesitate to contact Tara Davis at (215) 656-8533.

Sincerely,



Myra Coleman
Team Leader
Philadelphia Office

03982042

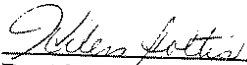
INDIANA UNIVERSITY OF PENNSYLVANIA
COMMITMENTS TO RESOLVE

In order to resolve the complaint #03982042, the Indiana University of Pennsylvania (the University), submits the following commitment to the Office for Civil Rights (OCR), U.S. Department of Education (the Department).

1. The University agrees to make no pre-admission inquiries as to whether an applicant for admission is a person with a disability unless the University is taking remedial action to correct the effects of past discrimination or the University is taking voluntary action to overcome the limited participation of qualified disabled persons in its programs. Such inquiries must include notice to applicants of one or both of these permissible purposes, in accordance with 34 CFR 104.42(c).
2. The University agrees to make no inquiries regarding an applicant's race/ethnicity unless the document states clearly that the information requested is voluntary, is intended for statistical purposes only, and will not be used as a factor in determining the applicant's admission to the University.
3. By May 1, 1999, the University will revise its Application for Admission form to be consistent with item #1 and 2, above.

Reporting Requirement

1. By May 28, 1999, the University will submit to OCR a copy of their revised admissions application form with the appropriate changes pursuant to item #3 above.



President or designee's Signature
Indiana University of Pennsylvania

3-16-99

Date