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SEP 23 2000

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Dr. Morris Marx
President
University of West Florida
1100 University Parkway
Pensacola, Florida 32514

Dear Dr. Marx:

Re: Complaint #04-00-2082

On March 2, 2000, the U.S. Department of Education (Department), Office for Civil Rights (OCR) received a complaint from (b)(7)(C) [Complainant], wherein she alleged discrimination on the basis of sex against the University of West Florida (University). Specifically, the Complainant alleged that a faculty member subjected her to sexual harassment and that the University failed to investigate her complaint of sexual harassment.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), as amended, 20 U.S.C. Sections 1681 *et seq.*, and its implementing regulation, 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any program or activity receiving Federal financial assistance from the Department. The University is a recipient of Federal financial assistance and is, therefore, subject to the requirements of Title IX.

The regulation implementing Title IX at 34 C.F.R. Section 106.8 (a) requires that the University designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX, including the investigation of any complaints alleging any actions which would be prohibited by Title IX. The University must also notify all its students and employees of the name, office address, and telephone number of the designated employee. Section 106.8(b) requires that the University adopt and publish grievance procedures providing for the prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited by Title IX.

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Section 106.9(a) requires that the University notify students, employees and other interested parties of its policy prohibiting discrimination on the basis of sex. The notification shall contain the University's prohibition against discrimination in its programs and activities and it should identify the employee designated to handle complaints.

The regulation implementing Title IX at 34 C.F.R. Section 106.31(a) prohibits discrimination on the basis of sex in the provision of any aid, benefit, or service offered by the recipient. The regulation at 34 C.F.R. Section 106.31(b) (1-4) and (7) provides 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, benefits, or service; provide different aid, benefit, or services; deny any aid benefit or service; subject any person to separate or different rules of behavior, sanctions, or other treatment; or provide significant assistance to any person that discriminates on the basis of sex.

Sexual harassment in the education context can take place in two related ways. The first, called "quid pro quo" sexual harassment, occurs when an employee of the institution conditions the granting of a benefit upon the receipt of sexual favors from a student, or punishes the student for refusing to comply. A "prima facie" case of such harassment under Title IX requires a showing that the individual was subjected to unwelcome sexual advances and that the individual's reaction to the advances affected tangible aspects of the student's education.

The second, called "hostile environment" sexual harassment, occurs when one or more employees of the institution create an atmosphere so infused with hostility toward members of one sex that they alter the education environment. To establish a "prima facie" case of such harassment under Title IX, it must be shown that the individual was subjected to unwelcome sexual advances so severe, persistent and objectively offensive that it altered the educational environment. Under Title IX, an educational institution is liable for a hostile environment created by sexual harassment perpetrated by its employees upon students if an official representing that institution had actual notice of the harassment, reacted with deliberate indifference, and has not taken action reasonably calculated to remedy the situation. In making environmental claim determinations, the objective "reasonable person" standard is used to determine whether the harassment is sufficiently severe or pervasive and whether the alleged conduct is of a sexual nature.

In reaching a determination in this complaint, OCR's investigation included an on-site visit to the University on July 27-28, 2000, and a review of documents pertinent to the issues of the complaint. During the on-site visit, OCR conducted interviews with University officials, staff and faculty, and the Complainant. During OCR's preliminary

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investigation, we found that the professor had previously filed a complaint of sexual harassment against the Complainant, which was investigated by the University. OCR has made the following determinations of fact:

- OCR has established that the University's sexual harassment policies and procedures contain the names and telephone numbers of University staff responsible for the acknowledgement and investigation of complaints of sexual harassment.
- OCR found that the Student Conduct Code (Code) contains the procedures for addressing sexual harassment complaints against students. OCR reviewed the Code, which provides for both informal and formal levels of resolution. The Code is published in the University's annual Academic Catalog and each year's Student Life Handbook. The University's Associate Vice President for Student Affairs (Vice President) is responsible for implementing these procedures.
- OCR found that the Office of Equal Opportunity and Diversity Complaint Procedures (Procedures) contain the procedures for addressing sexual harassment complaints against faculty. OCR reviewed the Procedures, which provides for both informal and formal levels of resolution. The Procedures are published on the Office of Equal Opportunity and Diversity's extensive web site that provides this information to faculty, staff and students. All students have an e-mail account and computer access at numerous locations on campus. The Equal Opportunity (EO) officer is responsible for implementing these procedures.
- Both procedures are widely disseminated throughout the University. They provide for the prompt and equitable resolution of complaints. Both faculty and students are provided with notice of the procedures and where to file complaints. The procedures provide due process protections for the accused. They provide for an investigation of complaints and for a forum for both parties to present evidence. They have provisions to protect the confidentiality of the parties. Notice of the disposition of the case is provided to the parties in writing. Finally, there is an opportunity for appeal.
- On November 18, 1999 the Vice President met with the Complainant and informed her that a University professor had filed a complaint against her alleging harassment. She was informed that the allegations would be reviewed pursuant to the Code. The Complainant was ordered to immediately cease and desist from any contact with the professor. During the meeting, the Complainant was provided a copy of the Code.

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- On November 18, 1999, during her initial meeting with the Vice President, the Complainant indicated that the professor was harassing her. The Complainant did not state that the harassment was sexual in nature. The Vice President explained the grievance procedures to the Complainant and offered to take her statement. She was informed that her statement would be forwarded to the Equal Opportunity Office because it was the office responsible for handling complaints against faculty. The Complainant declined to give a statement.
- On November 23, 1999, the Complainant was formally charged with harassment in violation of the Code. The Complainant requested an administrative hearing conducted by the Vice President.
- In a letter dated November 29, 1999, the Complainant denied that she had sexually harassed the professor. She stated that the professor had sexually harassed her by slamming doors and yelling at her.
- On December 1, 1999, a hearing was held regarding the professor's charge of sexual harassment. The Associate Vice President for Student Affairs served as the hearing officer. A summary of the minutes of the hearing indicated that the Complainant admitted she sent the professor numerous e-mails that stated that she was "fascinated and enamored" with him. In addition, a review of telephone messages from the Complainant to the professor showed that the Complainant called and left messages for the professor at all hours of the night. Some of the messages were affectionate in nature. The Complainant admitted that the professor told her to stop making the telephone calls and sending the e-mails, but she continued.
- The Complainant was given an opportunity to present evidence to rebut the professor's charge of sexual harassment and support her allegation of sexual harassment. The Complainant contended that her actions were based on her fear of the professor's aggression. She stated the professor looked at her funny and that she believed the professor was infatuated with her. The Complainant did not produce any additional evidence or information.
- On December 7, 1999, the Vice President for Student Affairs issued his report. According to the Vice President, the evidence indicated that the Complainant had engaged in harassing behavior toward the professor. The Complainant was determined to be stressed and unable to communicate properly. As a consequence of having harassed the professor, the Complainant was required to receive counseling related to stress management and proper communication. The University was to approve the counselor before the Complainant underwent counseling. In addition, the Complainant was permanently restricted (e-mails,

phone messages or contacts through third parties) from contacting the professor. The Complainant was notified that she had five days to appeal the hearing decision.

- On January 7, 2000, the Complainant filed a formal complaint with the University's Vice President for Equal Opportunity and Diversity, wherein she alleged that a professor discriminated against her on the basis of sex. Specifically, the Complainant alleged that the professor filed harassment charges against her which were false.
- According to University officials, the Complainant provided information that she alleged supported her allegation of sexual harassment. The information included the November 29, 1999 letter submitted to the Vice President and a list of witnesses that the Complainant stated would verify her allegations. Her complaint was referred to the University's Assistant Director for Equal Opportunity and Diversity (Director) for investigation.
- As part of the University's internal investigation of the Complainant's allegation, the Director reviewed the records and documentation from the previous harassment complaint filed against the Complainant, interviewed witnesses provided by the Complainant, interviewed the professor accused of sexual harassment and the Vice President. With regard to the witnesses that the Complainant stated could verify her allegations, the Director determined that none of the individuals had knowledge of any acts by the professor that could be considered sexual harassment. OCR also interviewed the professor. He denied the Complainant's allegation that he sexually harassed her. The professor asserted that the Complainant sexually harassed him.
- In a letter dated February 9, 2000, the Director informed the Complainant that after reviewing the documentation and interviewing the witnesses, it was determined that a new investigation would not be conducted. The Director stated that the Vice President had properly reviewed the allegations contained in the complaint. The Complainant was provided a copy of the University's Harassment Prevention Brochure, which contained detailed information on the types of behavior which may constitute sexual harassment. The Complainant was instructed to contact the Office for Student Affairs for any concerns regarding her complaint.
- In a letter dated February 16, 2000, the Complainant requested an appeal of the December 1999 determination made by the University's Office for Student Affairs, which found her responsible for harassing the professor. The Complainant stated she missed the five day deadline for filing an appeal

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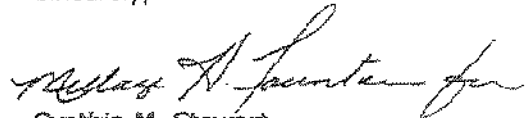
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because she did not realize until January 7, 2000, that the professor had sexually harassed her. In a letter dated February 23, 2000, the Vice President for Student Affairs informed the Complainant that the office would be unable to consider her appeal, due to her failure to file an appeal within the prescribed five day timeframe.

Based on the above facts, OCR found insufficient evidence to establish a violation of Title IX. The evidence was insufficient to show that the Complainant was sexually harassed or that the University failed to appropriately investigate the allegation after the Complainant contacted the University and informed them of the charge. Therefore, OCR is closing this case as of the date of this letter.

Thank you for the cooperation extended to OCR by you and your staff. If you have questions regarding this matter, please contact Ms Ledondria Hunter, General Attorney, at (404) 562-5461 or me, at (404) 562-6368.

Sincerely,



Cynthia M. Stewart
Team Leader

cc: Ms. Julie L. Sheppard
General Counsel

