



UNITED STATES DEPARTMENT OF EDUCATION
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25 JUN 2002

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

Dear Dr. Marx:

Re: Complaint #04-02-2043
Letter of Determination

On January 29, 2002, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received a complaint filed against the University of West Florida (University). In the complaint, [b] (Complainant) alleged you were treated differently by three instructors in the University's Department of Social Work on the bases of your race, disability, sex and age.

As stated in our letter dated February 28, 2002, OCR is responsible for enforcing:

- ξ Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. Sections 2000d-d6, and its implementing regulation, 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, national origin, in educational programs and activities receiving Federal financial assistance from the Department.
- ξ 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 105, which prohibit discrimination on the basis of sex by recipients of Federal financial assistance.
- ξ Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. Section 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in any program or activity receiving Federal financial assistance.
- ξ The Age Discrimination Act of 1975 (ADA), 42 U.S.C. Sections 6101-6107, and its implementing regulation, 34 C.F.R. Part 110, which prohibit discrimination on the basis of age by recipients of Federal financial assistance.
- ξ Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. Sections 12131-12165, and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public educational entities.

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The University receives Federal financial assistance and is a public entity. It, therefore, is subject to the requirements of Title VI, Title IX, Section 504, ADA and Title II.

OCR's investigation of the allegations included an analysis of records and documents pertinent to the issues raised in the complaint. Additionally, interviews were conducted with University officials and the Complainant.

The legal standards applicable to this case are found in the Title VI regulation at 34 C.F.R. Section 100.3(a) and (b)(1)(iv) and (v); in the Title IX regulation at 34 C.F.R. Section 106.31(a) and (b)(1)(7); in the Section 504 regulation at 34 C.F.R. Section 104.4(a) and (b)(1)(vii); in the Age Discrimination regulation at 34 C.F.R. Section 110.10(a); and in the Title II regulation at 28 C.F.R. Section 35.130(a) and (b)(1)(vii).

These regulations prohibit discrimination on the basis of race, gender, disability, and age either by treating an individual differently from others or by restricting the individual in the enjoyment of any advantage or privilege enjoyed by others.

The Complainant is a 57-year-old African-American female. She transferred to the University of West Florida in January 2001. She previously attended college in the state of California. The Disability Services Office at the University regards the Complainant as a student with a disability.

She identified several instances as examples of differential treatment by three instructors. These incidents occurred in March 2001, April 2001 and January 2002. A description of each incident is listed below.

March 2001 incidents

The Complainant alleged that one of her instructors, (b)(7)(C), treated her differently from other students when he referred to her as "Madam" during class and in a meeting. She stated that she found the term "Madam" offensive and believes that it was made because of her age and her race.

The Complainant alleged her instructor, (b)(7)(C), scolded her for asking questions in class, and for causing him to make up a second examination on her behalf. She stated that the instructor took these actions because of her disabilities (stress related anxiety and understanding, carrying out and remembering instructions).

The Complainant also alleged that the chair of the Social Work Department denied her request to have her examination graded by another instructor for (b)(7)(C) class, and failed to instruct (b)(7)(C) to not refer to the Complainant as "Madam" despite her request. She believes that these actions were taken because of her race.

April 2002 incidents

The Complainant alleged that one of her instructors, (b)(7)(C) treated her unfairly on April 17, 2001, when she went to (b)(7)(C) office at her request to retrieve study materials. The Complainant also alleged that as a result of her expressing her distaste about the alleged unfair treatment (b)(7)(C) placed a letter in her academic file on April 23, 2001. The letter described the Complainant's behavior as unprofessional and not acceptable based on the Code of Ethics for Social Workers. The Complainant believes that these actions were taken because of her race and disability.

January 2002 incident

The Complainant alleged that on January 16, 2002, she was sexually harassed by one of her instructors when she went to complain about an unfair grade. She believes that she was given an unfair grade because of her race.

The University has previously addressed the incidents occurring in March 2001 and April 2001 through a grievance filed by the Complainant. OCR's consideration of such a complaint is not a *de novo* review of the case. A review of the evidence from the University's investigation shows that:

- ξ No information was presented to indicate that (b)(7)(C) addressed the Complainant in a derogatory context.
- ξ Nothing in either the Complainant's or (b)(7)(C) statements suggested discriminatory behavior on (b)(7)(C) part.
- ξ The Chair of the Social Work Department made an unsuccessful attempt to negotiate a solution to the complaints raised by the Complainant against MB. The Complainant later withdrew from (b)(7)(C) class.
- ξ No information was provided to refute either the appropriateness or the accuracy of the memo sent to the Complainant from (b)(7)(C) regarding her behavior during a scheduled meeting. Information from the Complainant did not justify the removal of the memo from the file.

Having reviewed the evidence gathered during the University's investigation, OCR adopts the results. The University's investigation meets OCR's standards under the Title VI, ADA, and Title II regulations.

January 2002 Incident

The Complainant alleged that on January 16, 2002, she was sexually harassed by one of her instructors when she went to complain about an unfair grade. She believes that she was given an unfair grade because of her race.

Our findings with regard to this allegation are outlined below:

- ξ The Complainant was enrolled in an introductory social work class during the fall semester 2001.
- ξ The Complainant received a grade of C- for the class, but believes that she should have received a higher grade. Her belief is based on the instructor losing two of her exams.
- ξ Based on the course syllabus, students are evaluated/graded based on scores from exams, class attendance, and class participation.
- ξ The instructor acknowledges that two out of three of her exams were lost. The instructor explained that all students were given a grade of 93 on one exam because the exam results for the entire class were lost. On another exam, due to a mix-up in with the Disabilities Services Office, the Complainant's exam results were not forwarded to the instructor. The instructor explained that this exam was not counted in computing her final grade. The instructor indicated that her final grade was based on the exam which she received a 93, the final exam, her class participation and her class attendance.
- ξ A review of the grades received by other students in the class showed that the majority of students received grades of A or B. The Complainant and another student received a grade of C. One student failed the course. There was no evidence linking the grades to race.
- ξ The Complainant stated that an instructor, (b)(7)(C) treated her differently on the basis of her gender. Specifically, she stated that the instructor placed his hand on her shoulder, touched her on her leg, and stood in front of her with his lower extremities at her eye level, during a visit to his office to discuss her final grade for the course.
- ξ The instructor acknowledged that he met with her. He also confirmed that the purpose of the meeting was to discuss the Complainant's final grade. The instructor, however, denied inappropriately touching the Complainant. He stated that during the course of the meeting, he told her that he had to leave for his next class. He stated that the only physical contact he had with her was when he patted her on the shoulder in a socially acceptable manner to reassure her that everything would be all right and they could discuss grades at another time. The University offered the results of the University police's investigation of the complaint as supporting documentation. The University police's investigation found insufficient evidence of discrimination based on the lack of physical evidence and witnesses to corroborate the allegation.
- ξ Two other female students enrolled in the class indicated that they were unaware of any instances of sexual harassment by the instructor. They also stated that he treated all students the same. Both students indicated that they received high grades in the class, and attributed the Complainant's grade to her absences and not to the Complainant's claims of race or gender discrimination.

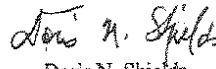
Based on the information listed above, OCR has determined that there is insufficient evidence to corroborate the Complainant's allegations of violations of the Title VI and

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Title IX regulations as they relate to this issue. The evidence does not show that the Complainant's race was a factor in the grade she received in the class. There is also insufficient evidence to establish that the instructor sexually harassed the Complainant when she went to his office to complain about her grade. To constitute sexual harassing conduct, the conduct must be sexual in nature, and to be severe, persistent or pervasive to limit a student's ability to participate in or benefit from the education program, or to create a hostile or abusive educational program. OCR did not find that the instructor's conduct of patting the Complainant's shoulder, touching her leg or standing in front of her was sexual in nature.

OCR is closing this complaint as of the date of this letter. If you have any questions, please contact Ms. Marsha Dodson, Equal Opportunity Specialist, at 404-562-6433, or me, at 404-562-6432.

Sincerely,



Doris N. Shields,
Team Leader
Team G