



UNITED STATES DEPARTMENT OF EDUCATION
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APR 8 2005

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Dr. Michael F. Adams
President
University of Georgia
P.O. Drawer 386
Athens, Georgia 30602

Dear Dr. Adams:

Re: Complaint #04-05-2025

This letter is to notify you of the determination of the U.S. Department of Education (Department), Office for Civil Rights (OCR), regarding the resolution of the above-referenced complaint filed against the University of Georgia (University). The Complainant specifically alleged that she was sexually assaulted several times by a male graduate student and that, after receiving notice of the sexual harassment, the University failed to investigate her allegations of sexual harassment and to take sufficient remedial actions.

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 education programs and activities by recipients of Federal financial assistance. The University receives Federal financial assistance, and OCR, therefore, has jurisdiction over this complaint.

Compliance Standards

Under the regulation implementing Title IX, at 34 C.F.R. Section 106.8(a), a recipient is required to notify all of its students and employees of the name or title, office address, and telephone number of the employee(s) designated to coordinate its Title IX compliance efforts. The regulation further requires at 34 C.F.R. Section 106.8(b), that a recipient adopt and publish grievance procedures which provide for the prompt and equitable resolution of student and employee complaints.

The regulation implementing Title IX, at 34 C.F.R. Section 106.31(b)(1), (2), (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 aid, benefits, or services nor shall it provide such aid, benefit, or service in a different manner on the basis of sex. The regulation also provides that a recipient shall not subject any person to separate or different rules of

behavior, sanctions, or other treatment, or otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity on the basis of sex.

Sexual harassment includes unwelcome sexual advances, request for sexual favors, and other verbal, nonverbal or physical conduct of a sexual nature, that are sufficiently severe, persistent, or pervasive as to limit a student's ability to participate in or benefit from an education program or activity, or to create a hostile, intimidating, or abusive educational environment. Students, both male and female, are protected from sexual harassment by school employees, third parties, and other students. If an employee who is acting in the context of carrying out his responsibilities over students engages in sexual harassment, the school is responsible for the discriminatory conduct regardless of whether it received notice.

There are two types of sexual harassment prohibited by Title IX: (1) "quid pro quo" harassment, where a student's entitlement to, or enjoyment of, an educational or employment benefit is explicitly conditioned upon that student's submission to sexual advances, request for sexual favors, or other sexually based verbal or physical conduct; and (2) "hostile environment" sexual harassment, where unwelcome sexual advances, request for sexual favors, or other sexually based conduct has the effect of interfering with the student's education by creating an intimidating, hostile, or offensive educational or work environment. The second form of sexual harassment is at issue in this case.

OCR determines whether the conduct complained of occurred and if it was sexual in nature. If so, OCR determines whether the conduct was sufficiently severe, persistent, or pervasive as to constitute a hostile environment as to interfere with or limit some aspect of the recipient's program. OCR also determines whether the recipient knew or should have known of the conduct and failed to take prompt and effective corrective action; if so, the recipient will be found in noncompliance with Title IX.

OCR's investigation included a review and analysis of documents and reports pertinent to the issues of the complaint, and interviews with the complainant and University staff. Based on the investigation, OCR found the following:

- The University's policy concerning sexual and discriminatory harassment states that the University is committed to maintaining a fair and respectful environment for living, work, and study. The policy prohibits any member of the faculty, staff, administration, student body, or visitors to campus, from harassing and /or discriminating against any member of the University community because of that person's race, sex (including sexual harassment), ethnic or national origin, religion, age, disabled status, or status as a disabled veteran of the Vietnam era. Incidents of harassment and discrimination are subject to appropriate disciplinary action, up to and including dismissal from the University.

- Under the University's procedures, all students and employees should report any discrimination and/or harassment that they experience and/or observe to the Non-Discrimination/Anti-Harassment Officer (NDAH). This is the individual designated by the President to be primarily responsible for providing education and training about discrimination and harassment to the University community, and for investigating reports and complaints of discrimination and harassment in accordance with this policy. The DAH Officer is authorized to designate other appropriately trained individuals to investigate discrimination and harassment complaints and reports as deemed appropriate. All complaints of discrimination and harassment will be promptly investigated and appropriate action will be taken as expeditiously as possible. Complaints and reports of discrimination and harassment should be reported as soon as possible after the incident(s) in order to be most effectively investigated. The University will respect the privacy of the complainant, the individual(s) against whom the complaint is filed, and the witnesses in a manner consistent with the University's legal obligations to investigate, to take appropriate action, and to comply with any discovery or disclosure obligations required by law.
- Documentation provided by the University shows that in August 2004, the complainant notified the University's Office of Judicial Programs that a fellow male graduate student (Student A) had raped her several times during the 2003-2004 school year. Due to the gravity of the charges and the fact that both individuals were employees as well as students, the Office of Legal Affairs asserted jurisdiction over this matter. This office assigned one of its attorneys to investigate the allegations. Both the complainant and the alleged perpetrator worked as cellular biologists while enrolled as students.
- The University provided documentation that shows that the complainant was advised by the attorney/investigator during the August 2004 meeting to report this matter to the police because of the alleged criminal behavior. According to the attorney/investigator, the complainant declined to do so at that time, stating that she did not think the police would be able to take action due to lack of evidence. The complainant confirmed during the investigation that she made this statement.
- Documentation shows that on September 1, 2004, the attorney/investigator met with the complainant. During this meeting, the complainant shared several incidents in which she and Student A were together privately and in which she and Student A were nude when they were alone together. She related that on two (2) of these occasions, Student A had sexual intercourse with her without her consent. As a resolution of this matter, the complainant wanted Student A to be removed from the Cellular Biology Department.
- Documentation revealed that on September 10, 2004, the attorney/investigator had an initial meeting with Student A. During that meeting, the attorney/investigator informed Student A of the rape allegations against him. Student A admitted that he had engaged in

sexual contact with the complainant. He, however, stated that it was consensual sexual relations. He stated that they had been more than friends for a few months, but did not engage in sexual relations until Summer 2004.

- Documentation shows that during the course of the investigation, the attorney/investigator was unable to substantiate the allegations of rape made by the complainant, even though the attorney/investigator interviewed a third party about the situation. The attorney/investigator was told by this witness that the complainant and the alleged offender appeared to be friends. It was clear to the attorney/investigator, however, that the complainant did not feel comfortable in her living and working environment. Although the University did not find that Student A engaged in behavior in violation of the University's Non-Discrimination and Anti-Harassment Policy, the University desired to resolve the matter in a manner that would allow each party to successfully continue his/her educational endeavors at the University. The attorney/investigator worked with both parties and the department head to determine what efforts may be appropriate, but the University could not impose the restrictions against Student A sought by the complainant because Student A was not found in violation of the University rules.
- During OCR's investigation, the complainant provided us with a list of five witnesses who, according to the complainant, could support her allegations. OCR was able to interview four of the witnesses by telephone. The fifth witness was not enrolled at the University during the investigation and OCR could not contact her with the telephone number provided by the complainant. Three of the four witnesses agreed that the complainant and the alleged offender had a good working relationship and were friends. One of the interviewees stated that the complainant and the alleged offender were good friends before August 2004. After August 2004, the friendship started to break-up but the interviewee did not know the reason for the break-up. OCR could not substantiate, based on any of the witness statements, that they believed the complainant was subjected to sexual harassment because none of the witnesses in fact witnessed any sexual harassment by Student A.
- Evidence revealed that the complainant was dissatisfied with the resolution agreement obtained by the University. The agreement in part called for Student A: (1) to move from his old apartment which was near the complainant's apartment to a new apartment; (2) to use the outside door to enter the laboratory; (3) to not use the laboratory in which the complainant works; and (4) to eliminate interactions with the complainant. Following the end of the investigation, the attorney/investigator received numerous calls and emails from the complainant implying that she did not feel comfortable or was fearful. The attorney/investigator promptly informed the complainant that if she felt she was in danger, she should immediately contact the University Police Department (UGAPD).

- The complainant has pursued the allegation that Student A is not living up to the University's resolution agreement with the University's Student Judicial Panel. According to the attorney/investigator, Student A felt like he had a legitimate reason for not using the outside door to enter the laboratory. (Student A stated that one of his experiments had gone awry, and he needed to go to the laboratory to look into the matter.) However, the attorney/investigator said that the Student Judicial Panel disagreed with Student A and informed him he must live up to the resolution agreement.
- Documentation shows that during November 2004, the complainant contacted the UGAPD stating that she had been raped by the alleged offender. A female and male detective investigated the allegations made by the complainant. In December 2004, UGAPD's file on this matter was placed in inactive status due to lack of evidence to substantiate the complainant's claims. The judicial system also investigated this matter by conducting a Good Bond Hearing in Athens-Clarke County Magistrate Court. The Court incorporated the University's resolution agreement of the sexual harassment complaint into its ruling, but the Court did not see a need to take any further actions against Student A.

Conclusion

Based on the above information, OCR concludes that the complainant filed an allegation of sexual harassment with the University and provided the University with the name of the male student who allegedly sexually harassed the complainant. Evidence revealed that upon the receipt of the complaint, the University immediately began investigating the matter. The University interviewed Student A and during that meeting, Student A admitted that he had engaged in sexual contact with the complainant; however, he stated that it was consensual sexual relations. He stated that they had been more than friends for a few months, but did not engage in sexual relations until Summer 2004. None of the witness identified by the complainant could substantiate her claims of sexual harassment. The University's investigation revealed insufficient evidence to substantiate the allegations of involuntary sexual misconduct. OCR has also determined that there is insufficient evidence to establish noncompliance with Title IX with respect to the Complainant's allegation because the University investigated the matter promptly and, while the allegations of sexual misconduct was not established, the University attempted to address the concerns presented by the Complainant.

This concludes OCR's consideration of this complaint, and OCR is closing this complaint as of the date of this letter. This letter of resolution should not be construed as covering any other issues regarding compliance with Title IX that may exist and are not addressed herein. Please note that under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If we receive such a request we will seek to protect, to the extent possible, any unwarranted invasion of privacy.

Dr. Michael F. Adams
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Thank you for your cooperation in this matter. If you have any questions regarding this matter, please contact Mr. Bill Frazier, Equal Opportunity Specialist, at (404) 562-6413, or me, at (404) 562-6419.

Sincerely,


Doris V. Maye
Team Leader