



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

Dr. Ronald L. Vaughn
President
The University of Tampa
401 W. Kennedy Blvd., Box A
Tampa, Florida 33606-1406

SEP 22 2008

Dear Dr. Vaughn:

Re: Complaint #04-08-2071

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of this complaint filed against the University of Tampa (University) filed on February 19, 2008. The Complainant allege that a student at the University sexually assaulted her, and campus security officers failed to appropriately investigate her allegation of sexual harassment/sexual battery. The Complainant also alleged that the University failed to provide effective grievance procedures because the accused was allowed to present new evidence on appeal that she was not given an opportunity to rebut. The Complainant further alleged that the University failed to take immediate and effective corrective action responsive to three other incidents of harassment.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681 *et seq.*, and its implementing regulation, 34 C.F.R. Part 106. Title IX prohibits discrimination on the basis of sex in any education program or activity operated by a recipient of Federal financial assistance. As a recipient of Federal financial assistance from the Department, the University is subject to the provisions Title IX. OCR has jurisdiction to investigate this complaint.

Based on the complaint allegations, OCR investigated the following issues:

- 1) Whether the University has a grievance procedures that provides for prompt and equitable resolution of Title IX complaints in noncompliance with the Title IX implementing regulation at 34 C.F.R. §§ 106.8(b);
- 2) Whether it failed to appropriately investigate the Complainant's allegation of sexual harassment in noncompliance with the Title IX implementing regulation at 34 C.F.R. §§ 106.8(b) and 106.31; and
- 3) Whether it failed to take prompt effective corrective action to end the other

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404-562-6350, Fax: 404-562-6455, TDD: 404-562-6454
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incidents of harassment and prevent their reoccurrence, in noncompliance with the Title IX implementing regulation at 34 C.F.R. §§ 106.8(b) and 106.31.

During the complaint resolution process, OCR reviewed documents provided by the Complainant and the University, and conducted interviews with the Complainant and University staff. The Complainant was contacted and offered an opportunity to rebut evidence obtained. Based on the available evidence, OCR finds that the evidence is insufficient evidence to support a finding of noncompliance with Title IX relative to the complaint allegations. Set forth below is a summary of OCR's legal standards, findings, and conclusions.

Legal Standards

The regulation implementing Title IX, at 34 C.F.R. § 106.8(b) requires that the College adopt and publish grievance procedures providing for the prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by Title IX. The regulation further states, at 34 C.F.R. § 106.31(a), that no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity operated by a recipient. Specifically, the regulation, at 34 C.F.R. § 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, benefit, or service; provide different aid, benefits, or services or provide aid, benefits, or services in a different manner; deny any person any such aid, benefit, or service; 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.

Factual Findings

A. University's Harassment Policy and Grievance Procedures

The University has a policy that defines sexual harassment of a student or University employee as unwanted or unwelcome conduct of a sexual nature or with sexual implications that interferes with that person's status, evaluations, or performance by creating an intimidating, hostile or offensive environment. The University's harassment policy states that a thorough investigation will be conducted by the responsible bodies (Dean of Students (Dean) or the Director of Human Resources) to deal with complaint(s), up to and including possible expulsion, of any violator of the University's harassment policy.

The University's procedures instruct students who believe they have been subjected to harassing conduct to report the harassment to the Director of Human Resources or the Dean. Once a report is received, the individual will have a discussion of the incident with

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the Dean/Director of Human Resources, who will explain all possible actions to address resolution of the grievance. The offended individual will be asked to prepare a written, signed statement, which fully describes the situation in narrative form. All student complaints involving sexual harassment by other students are referred to the Office of Student Conduct.

The Office of Student Conduct allows any member of the University community to file charges against any student for misconduct. If a student decides to file charges, the charges are prepared in writing and directed to the judicial coordinator (Coordinator). The Coordinator is responsible for conducting and overseeing the judicial hearing. The Coordinator may conduct an investigation to determine if the charges have merit and/or the charges can be disposed of administratively by mutual consent of the parties involved on the basis acceptable to the Coordinator.

All charges are presented to the accused student in written form. A reasonable time is set for a hearing after the pre-hearing meeting. Any student receiving notice of charges is required to attend the mandatory pre-hearing session with the Coordinator or designee.

A member of the University community may assist the accused student and the party bringing the charges. The person providing assistance is not permitted to take part in the hearing but may communicate with the accused or the complainant. Both the party bringing charges and the accused have the privilege of presenting witnesses, who may be questioned by the judicial body. In addition, the accused student found responsible for conduct violations may present character witnesses during the sanctioning phase of the hearing.

Pertinent records, exhibits and written statements may be accepted as evidence for consideration by a judicial body at the discretion of the Coordinator. All procedural questions are subject to the final decision of the Coordinator.

After the presentations of all parties, the judicial body determines by majority vote whether the student has violated each article of the student code that the student is charged with violating. The judicial body's determination is made on the basis of whether it is more likely than not that the accused student violated the student code. A written statement of the judicial body's decision is mailed to the accused not less than ten days after the hearing.

The University's sexual harassment policy and grievance procedures are disseminated to all members of the University's community through the University's website and are readily available online to all students.

B. The Alleged Assault

On September 1, 2007, the Complainant reported an incident of sexual assault to the local police department. During interviews, campus security officers (officers) stated that the Complainant did not report the incident to the Campus Safety and Security Office. The security officers stated that they became aware of the incident when the local police officer responding to the incident asked them to accompany him to the scene. The security officers stated that when they arrived at the dormitory where the incident allegedly occurred, the local police began their investigation.

The Complainant stated that the campus security officers did not conduct an appropriate investigation of her report of sexual assault because they did not conduct an independent investigation; instead, according to the Complainant, they shadowed the local police department's investigation. She stated that the information contained in the security officers' report such as date and times on the video cameras was incorrect. She also states that the campus security officers were allowed to be present during the entire hearing and were allowed to question witnesses.

The security officers stated that they did not interview the Complainant or conduct an investigation when they arrived on the scene because the local police officers do not allow them to participate in their criminal investigations. They stated that they interviewed the accused once he was located. According to the security officers, they typically do not reinvestigate incidents that are investigated by the local police department. The security officers informed OCR that the police officers that investigated this incident interviewed witnesses as part of their investigation, and the security officers reviewed and deferred to the factual findings (but not the conclusions drawn from those findings) of the police investigation. The Complainant confirmed that the police interviewed her and other witnesses identified.

During the interview, the security officers advised OCR that they would have been responsible for conducting an investigation had the Complainant reported the incident to campus security. The security officers stated that they have a checklist that instructs them how to appropriately respond to complaints of sexual assault, and they receive training on the checklist from the Associate Dean, who is over the University's victim advocacy program. The security officers also stated that they received training from the local police department on how to respond to complaints of sexual assault. The security officers denied that their reports of the incident were incorrect and contained errors.

On September 1, 2007, the University issued an advisory that a sexual assault been reported to the local police department. The University also temporarily suspended the housing contract of the accused in an effort to immediately separate the alleged victim and the accused. Documentation also shows that on September 4, 2007, the Associate Dean contacted the Complainant and requested to speak with her regarding the incident. The Dean and the Associate Dean stated that they met with the Complainant regarding

the incident and informed her of her right to file charges against the accused. The Coordinator stated that he also contacted the Complainant approximately one week after the incident occurred to discuss the incident and explain the complaint process under of the Student Code of Conduct (Code), which included her right to file charges against the accused. The Complainant acknowledged being contacted by the Coordinator, the Dean, and the Associate Dean regarding the incident.

The Complainant informed OCR that the Coordinator asked her to explain what happened regarding the incident, and she told him. She stated that he informed her that he needed the names of witnesses who could verify the incident occurred. The Complainant provided him the names of witnesses. The Coordinator contacted the witnesses identified.

Once the Complainant filed charges, officials scheduled a hearing. The accused was charged with violation of Article 7 (Personal Abuse) of the Code. Personal Abuse includes sexual harassment and sexual battery. Documentation shows that on September 26, 2007, the Coordinator provided the Complainant a copy of the incident report so that she could prepare for the hearing. Documentation also shows that the Coordinator emailed the Complainant regarding the date and time of the hearing and advised her of his availability to meet with her.

The Coordinator stated that the accused was notified of the charges and participated in a pre-hearing session. On October 19, 2007, a hearing was held. The Coordinator stated that a University faculty member was assigned to assist the Complainant. The Coordinator also stated that at the Complainant's request, she was allowed to participate in the hearing from a separate room via closed circuit television and a microphone. The hearing board was composed of faculty and staff members from the University. During an interview, a hearing board member stated that the board is notified of the charges and provided a copy of the Code to review relating to the charges. The hearing board member stated that the board reviews the Code to understand what has to be determined in order for the accused to be found responsible.

Documentation shows that both the Complainant and the accused were allowed to present evidence and witnesses during the hearing. The Coordinator stated that both the hearing board and the security officers were allowed to question witnesses during the hearing, but he stated that they were only allowed to ask questions through him, and they could only ask questions that he deemed relevant to the charges. The Coordinator stated that the security officers typically question witnesses regarding any statements made that contradict the information contained in their incident reports.

At the conclusion of the hearing, the hearing board notified the accused that he had been found responsible for violation of Article 7, Personal Abuse, of the Code, and sanctions were imposed. The Complainant was also notified that the accused had been found responsible. The accused was sanctioned as follows: (1) suspension from the University from October 31, 2007 through May 15, 2008, (2) termination of residency, and (3)

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restricted access to the University campus from October 31, 2007 through May 15, 2008. The accused was also required to complete a counseling assessment with a licensed counselor.

On October 23, 2007, the accused filed a timely appeal of the hearing board's determination. On November 8, 2007, a hearing was held regarding the appeal. The appeal hearing board (Board) reduced the sanctions for the accused. The Complainant was notified of the Board's determination.

The Board members interviewed by OCR stated that their decision to reduce the sanctions for the accused was based solely on evidence presented during the original hearing, which included a copy of the transcript and the videotape that was viewed. According to the Board members, they considered evidence that was heard by the original panel, but the Board did not believe was considered by the original hearing panel in making its determination.

C. Incidents of Harassment

The Complainant also alleged that she was subjected to the following three subsequent incidents of harassment as a result of her charges against the accused: (1) two female students came to her dorm room and harassed her about filing charges against the accused, (2) she saw the accused on her dormitory hall in violation of a No Contact Order, and (3) she saw the accused outside of her dormitory where he stared at her in an intimidating manner. The Complainant states that the University failed to take immediate and effective corrective action responsive to these subsequent incidents of harassment.

OCR reviewed the University's response to the Complainant's allegations of harassment. Regarding the first incident of harassment, documentation shows that on October 20, 2007, the Complainant sent an email to the Coordinator requesting to file charges of harassment against two female students who she stated came to her dorm room and harassed her about filing a complaint against the accused. Evidence shows that the Coordinator immediately responded to the Complainant's email and the Complainant was provided the option of changing her dormitory. The Complainant initially denied the University's offer to change dormitories, but she later moved to another dormitory. The Complainant stated that she did not report any future incidents of harassment concerning the two female students.

Regarding the second incident of harassment, the Coordinator stated that while the accused appeal was pending, the Complainant alleged that she saw the accused on the hall in her dormitory in violation of his No Contact Order. The Coordinator stated that he contacted the accused, and the accused agreed to voluntarily change his sanction from a No Contact Order to a Restricted Access Order, which is a more severe sanction. In an email sent November 6, 2007, the Coordinator advised the Complainant that the No Contact Order for the accused had been changed to a Restricted Access Order. The

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Complainant stated that she did not report any further incidents of seeing the accused on her dormitory hall.

Regarding the third incident of harassment, on March 6, 2008, the Complainant sent an email to the Coordinator alleging that she saw the accused outside of her dormitory, and he stared at her in an intimidating manner. Documentation shows that the Coordinator immediately responded to the Complainant's email and requested additional information regarding the incident. Although the evidence showed that the individual the Complainant saw was not the accused, the Complainant was allowed to file charges against that individual. According to the Coordinator, the hearing panel found the individual charged not responsible for violating the Code. The Complainant stated that she had not reported any further incidents of harassment against the accused.

Analysis and Conclusion

Regarding Issue #1, OCR finds that the University's grievance procedures meet the requirements of Title IX. As discussed above, the University has written procedures that provide for prompt and equitable resolution of student and employee complaints alleging acts that would be prohibited by Title IX.

Regarding Issue #2, OCR finds that the University appropriately investigated the Complainant's allegation of sexual harassment/battery. Upon notice of the Complainant's allegations of sexual assault, the University responded by notifying the Complainant of her right to file charges against the accused. In addition, the University's security department reviewed the factual findings of the police investigation and conducted an interview with the accused concerning the alleged harassment. Through the University's grievance procedure, a hearing was held and the accused was found to have committed the alleged offense based, in part, on the evidence that resulted from the University security department's investigation. Evidence shows that the Complainant was afforded an opportunity to present evidence and witnesses during the hearing, and she was promptly notified of the outcome of the hearing.

The Complainant alleged that the accused was allowed to present new evidence during the appeal, and she was not given an opportunity to rebut. Although Title IX does not require recipients to provide appeal procedures, OCR's investigation revealed that the Board did not consider any new evidence outside of the original hearing record in its determination to reduce the sanctions of the accused.

Regarding Issue #3, evidence also shows that the University was responsive to the Complainant's three allegations of harassment, and took prompt and effective action to end the harassment and prevent its recurrence. Specifically, the University allowed the Complainant to move dormitories in response to her charges of harassment against two students in her dormitory, and the University immediately increased the sanctions against the accused for being present on the Complainant's dormitory hall. OCR determined that

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the University sanctions can reasonably be calculated to serve as a deterrent to future occurrences of harassment of the Complainant by the accused. In addition, the University allowed the Complainant to pursue harassment charges against the accused who she believed stared at her.

Based on the above, OCR concludes that there is insufficient evidence to support a finding of noncompliance with the Title IX regulatory requirements with respect to the allegations.

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 provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of privacy. Intimidation or retaliation against complainants by recipients of Federal financial assistance is prohibited. No recipient may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the laws OCR enforces, or because one has made a complaint, or participated in any manner in an investigation in connection with a complaint.

This concludes OCR's consideration of this complaint, which we are closing effective the date of this letter. We appreciate your cooperation and that of your staff during the investigation of this complaint. If you have questions or concerns regarding OCR's determination, please contact Ms. Ledondria Saintvil at 404-562-5461 or me at 404-562-6390.

Sincerely,

Virgil Hollis
Compliance Team Leader