



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS
MIDWESTERN DIVISION, CHICAGO OFFICE

JUL 10 2002

Walter V. Wendler
Chancellor
Southern Illinois University-Carbondale
Carbondale, Illinois 62901-4300

Re: OCR #05022039

Dear Dr. Wendler:

The U.S. Department of Education, Office for Civil Rights (OCR) has completed its complaint resolution activities with respect to the subject complaint filed against Southern Illinois University-Carbondale (University). The Complainant (Student A) alleged discrimination on the basis of his sex, male. Specifically, Student A alleged that, as a student and Teaching Assistant in the History Department, in the fall 2001 academic term, he was treated differently than two other similarly situated female students. Student A alleged that, as a result of this treatment, his Teaching Assistant duties were changed in September 2001 and he was not accepted into the Ph.D. program in History in October 2001.

As a recipient of financial assistance from the U.S. Department of Education, the University is subject to the provisions of Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 *et seq.*, and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in education programs and activities receiving Federal financial assistance from the Department of Education.

During the complaint resolution process, OCR interviewed the Complainant on several occasions, as well as other witnesses. Also, OCR reviewed documents provided by Student A and the University. OCR has determined that there is insufficient evidence to support the allegations of discrimination made in the complaint.

Background Summary

Teaching Assistant Information

Student A had taken a course in the History Department (Department) during the summer of 2001. In August 2001, the Department needed to hire an additional Teaching Assistant to assist in teaching lower level history courses and did not have sufficient applicants for the position. Student A indicated to the Department that he intended to apply as a candidate to the Ph.D.

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History Program. The usual requirement for a Teaching Assistant in the Department is that the individual be enrolled in the Department's graduate program. Because the Department needed an additional Teaching Assistant and did not have sufficient applicants, the University decided to hire Student A as a Teaching Assistant as an unclassified graduate student for Fall Semester 2001. Student A understood that his continued employment as a Teaching Assistant, within the Department, was subject to "satisfactory performance of his duties." Student A was assigned to assist a particular departmental faculty member (Professor A), along with two female Teaching Assistants (Teaching Assistants A and B). Professor A was teaching World History 100. In this course, twice a week, Professor A lectured all the students. The Teaching Assistants then held small group discussion sessions designed to enhance students' understanding of the course material. The Teaching Assistants worked at the direction of Professor A. Student A was assigned two discussion sections of World History 100 and Teaching Assistants A and B were assigned four small discussion sections of World History 100. Student A was then enrolled in two four hundred level History courses.

Student A believed that he was hired for the Teaching Assistant position because of his strong qualifications and because he had been a Teaching Assistant from 1995 to 1997 in the Botany Department at the University. However, according to Professor A, Student A did not have strong qualifications for the position. She stated that there was a marked difference of experience between Student A and Teaching Assistants A and B. Teaching Assistant A was a Ph.D. candidate in the History Department with two years of Teaching Assistantship experience; she had taken six to seven years of history courses. Teaching Assistant B, who was a Master's degree candidate in the Department, also had previous teaching assistantship experience and had been a Teaching Assistant for World History 100 in the Spring Semester of 2001. In contrast to Teaching Assistants A and B, Student A had completed only one History course.

Student A asserted that, as a Teaching Assistant in the Department, he encountered difficulties working with Professor A. Student A felt that Professor A was highly critical of him. Student A further alleged that Professor A did not criticize Teaching Assistants A and B. Student A informed OCR that he had to attend weekly staff meetings with Professor A and Teaching Assistants A and B. Student A alleged that Professor A would yell at and berate him at these staff meetings. Likewise, Student A alleged that Professor A engaged in the same type of behavior when she met with him individually. Student A stated that he felt that he "could not do anything right" and that Professor A did not give him direction as to how to correct his behavior. Student A believed that he covered the same materials, within a certain range of variation, as Teaching Assistants A and B. Student A informed OCR that students transferred into his discussion sessions and that he had almost perfect attendance in his sessions.

OCR interviewed Professor A who stated that she did not yell at or berate Student A. She stated that the Teaching Assistants had to attend her lectures, take notes and then lead the small group discussion sessions. Professor A held weekly meetings with the three Teaching Assistants to discuss the content of the Teaching Assistants' small group sessions from the previous week and to discuss the content of the upcoming sessions. Also, at these meetings, she provided outlines and course materials for her upcoming lectures. Professor A stated that the weekly meetings were to share ideas and information. Also, Professor A stated that she used the meetings to discern whether students understood the larger concepts and greater principles of the material she

presented. Professor A stated that she was not concerned with students memorizing facts and dates but that she wanted them to understand the overall concepts and intellectual principles of the material. If students were having trouble understanding the overall concepts and principles, she would try to provide guidance to the Teaching Assistants as to how they might explain these items. Professor A believed that the Teaching Assistants should be granted a certain amount of autonomy in leading their sessions and independence to develop their own ideas on teaching; however, she believed it essential that students grasp the overall concepts and principles of the course.

Professor A found that Student A had his own individual vision as to how to present his discussion sessions. Professor A cited a number of incidents involving Student A. Professor A stated that, early in the course, she realized that she had made a mistake in the overall course reading syllabus and, at one of their first weekly meetings, she asked the Teaching Assistants to pass out a correction to the syllabus. However, Student A passed out a syllabus with the incorrect reading assignment and did not inform students of the correction. Professor A said that, more importantly, she told the Teaching Assistants that she wanted a friendly and unthreatening class environment. Professor A said that World History 100 involved a large number of facts and it could be overwhelming to students, so she did not want students to memorize facts but rather to understand the overall concepts and principles. Accordingly, Professor A told the Teaching Assistants not to drill students on historical facts as a teaching method. However, Student A informed Professor A that he was drilling students on facts. He informed Professor A that he believed that students would not understand the overall concepts and principles without memorizing historical facts and argued with Professor A concerning her teaching methods. Further, Professor A said that Student A took attendance in his sessions by giving students quizzes on facts, even after she explicitly told him not to do so. Also, Professor A told OCR that she asked the Teaching Assistants to use similar grading criteria for consistency in the different discussion groups. Professor A said that Student A disregarded her request, commenting that he might have higher standards and that he believed that he could do as he chose.

The History Department Chair (Chairperson) corroborated the above-stated facts. OCR interviewed the Chairperson who stated that Student A frequently talked to her about his Teaching Assistantship and his relationship with Professor A. The Chairperson stated that she realized, after talking with Student A on several occasions, that he had problems comprehending the course materials. Also, Student A openly criticized Professor A's teaching methods. Subsequently, the Chairperson had discussions with Professor A regarding Student A's lack of understanding of the course materials and his teaching methods. The Chairperson stated that Student A told her that Professor A was not pleased with him and he stated that he was quizzing students regarding historical facts, even though Professor A told him not to. The Chairperson said that she tried to tell Student A to work with Professor A and the other Teaching Assistants as a team. The Chairperson said that Student A, however, did not change his teaching approach and did not attempt to work as a team member.

Student A stated that, at the September 17, 2001, weekly meeting, Professor A told him that his preparations for class were inadequate. Student A states that, after that staff meeting, he copied Teaching Assistant's B's presentation that Professor A had found acceptable at the meeting. Student A contends that he presented the same materials to Professor A on September 18, 2001,

and Professor A told him that the materials were unacceptable. According to Student A, Professor A could not explain what was wrong with the presentation and would not tell Student A how to correct it. Student A said that Professor A became excited and asked him to leave the meeting.

Professor A told OCR that, at the September 17, 2001 weekly meeting, she had a discussion with the Teaching Assistants regarding how to present a very difficult topic on Indian religion, including various ways to convey this complex material to students. Professor A said that she provided supplemental readings and excerpts to the Teaching Assistants to use to prepare for their meetings. Student A did not contribute to the discussion at the meeting. Student A came to see Professor A the next day, September 18, 2001, to show what he was intending to do in his small group meetings. Professor A said that Student A had eight pages that she believed were photocopied out of a book. According to Professor A, Student A presented information that could not be explained in a one-hour session because it was lengthy and lacked organization. Professor A said she found the materials to be inappropriate and attempted to discuss the materials with Student A who became extremely defensive and started yelling at her. Professor A stated that there was a hostile exchange, and Student A left.

Thus, based on the above-described incidents, the Chairperson decided that it would be best that Student A not continue as a Teaching Assistant for World History 100. The Chairperson told OCR that she had never before had to consider terminating a Teaching Assistant's contract. The Chairperson said that she consulted other University administrators and decided that Student A should be removed from his teaching responsibilities, based upon his unsatisfactory performance as a Teaching Assistant and his inappropriate interaction with the University staff and students. The Chairperson decided that she would reassign Student A to work on projects under her supervision rather than terminate his contract. On September 21, 2001, the Chairperson met with Student A to advise him that he was going to be working for her for the remainder of the semester. The Chairperson told Student A that his functioning as a Teaching Assistant for World History 100 was not working out so he was being reassigned to work as her Research Assistant. The Chairperson commented that Student A did not believe there had been any problem with his performance as a Teaching Assistant, but he said that he was willing to work for her.

Ph.D. Program

On October 12, 2001, according to University administrators, Student A was denied admission into the Ph.D. program. The Chairperson told OCR that Professor A and she normally serve on a committee of five that make admission determinations on Ph.D. applications for the History Department. Both Professor A and the Chairperson recused themselves from the Ph.D. candidate committee regarding Student A's applications.

Student A did not believe that Professor A or the Chairperson would give him a fair evaluation. According to University administrators, the decision to deny Student A admittance to the Ph.D. program was based upon several factors: Student A's minimal background in history, a belief that a specific project he wanted to work on was untenable, and a letter of recommendation for Student A that lacked any faculty references with direct knowledge of his academic abilities.

The University contends that Student A was denied admission to the Ph.D. program based on his credentials as reviewed by the three committee members.

Analysis and Conclusion

Under the Title IX regulation at 34 C.F.R. 106.31(a), a recipient may not, on the basis of sex, exclude a person from participation in, deny a person the benefits of, or otherwise subject a person to discrimination in any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives or benefits from Federal financial assistance from the U.S. Department of Education. Further, under the Title IX regulation at 34 C.F.R. 106.31(b)(2) and (4), a recipient, in providing any aid, benefit, or service to a student, shall not, on the basis of sex, provide different aid, benefits, or services in a different manner, or subject any person to separate or different rules of behavior, sanctions, or other treatment.

To establish a *prima facie* case of sex discrimination the aggrieved person, in this instance Student A, must establish the following: 1) that he was a member of a protected class, male; 2) that he was treated differently than similarly situated individuals by the University; and 3) that these individuals were not members of the protected class. If the record contains sufficient evidence to establish a *prima facie* showing of discrimination, the University must provide a legitimate, nondiscriminatory reason for the different treatment of Student A. If the University articulates a non-discriminatory explanation, then the Complainant must provide information to prove that these reasons were not the true reasons for the University's decision but were in fact pretextual. However, even if the Complainant succeeds in proving that the University's articulated reason for the adverse action is untrue or pretextual, the burden is still on the Complainant to demonstrate that University's articulated reasons were a pretext for sex discrimination. Therefore, the question for OCR becomes whether there is some competent evidence that the University's articulated reason is pretextual. In other words, OCR must determine whether the evidence provided by the Complainant supports a finding that the reason articulated by the University was not the true reason for the challenged action and that the real reason was discrimination based on sex.

OCR evaluated whether the University treated Student A differently on the basis of his sex, male, than two other similarly situated individuals, who were not members of the protected class. It is undisputed that Student A was a member of the protected class in that he was male. It is also undisputed that Teaching Assistants A and B were females and were not members of the protected class. Also, it is undisputed that Student A was treated differently than Teaching Assistants A and B when Professor B changed Student A's Teaching Assistant duties.

However, at issue is whether Student A was similarly situated to Teaching Assistants A and B. Professor A stated that the Teaching Assistants A and B were both students who had been accepted into the Department's Graduate program and that Student A was an unclassified student who had not been accepted into the Department's Graduate program. Further, Teaching Assistant A had two years of previous teaching assistantship experience; Teaching Assistant B had been a Teaching Assistant for World History 100 in the Spring 2001, and Student A had never functioned as a Teaching Assistant for this course. Further, these Teaching Assistants had taken

extensive History courses and Student A had only taken one History course. Arguably, Student A and Teaching Assistants A and B are not similarly situated. Therefore, Student A has not provided a *prima facie* showing of sex discrimination. However, even if Student A had provided a *prima facie* showing of sex discrimination, the University has articulated a legitimate, nondiscriminatory reason for the different treatment of Student A.

OCR's investigation revealed that Student A was removed from his responsibilities as a Teaching Assistant because he was having difficulties working as a team member and was encountering repeated difficulties working with Professor A. Professor A regularly advised Student A on how to satisfactorily perform his duties as a Teaching Assistant. Professor A made an effort to work with Student A because of the unusual circumstance that Student A functioned as a Teaching Assistant without a solid background in history and having his status being that of an unclassified student.

Based upon Student A's poor performance as a Teaching Assistant, the Chairperson removed him from his teaching duties and allowed Student A to fulfill the remainder of his contract by reassigning him to other projects. Therefore, OCR concludes that the University had a nondiscriminatory reason for changing Student A's teaching assistant's duties and did not change his duties because of his sex, male. Further, Student A has not provided any information to prove that these reasons were not the true reasons for the University's decision but were in fact a pretext for discrimination.

OCR's investigation further revealed that Student A was denied admission into the Ph.D. program based solely upon his credentials. Both Professor A and the Chairperson recused themselves from the committee to assure that Student A received fair consideration for admittance to the Ph.D. program. Thus, OCR concludes that the University had a nondiscriminatory reason for not accepting Student A into the Ph.D. program in History in October 2001 and his performance as a Teaching Assistant did not affect his application to the Ph.D. program.


Based on the foregoing, OCR concludes that there is insufficient evidence that the District discriminated against Student A on the basis of his sex, male, and was not in violation of Title IX and its implementing regulation at 34 C.F.R. 106.31 (a), (b)(2) and (b)(4) with respect to the allegations raised in this complaint.

This concludes OCR's resolution activities with respect to this complaint, which is being closed effective the date of this letter. We wish to thank you and your staff, especially Ms. Kathe Klare University Attorney, for the cooperation and courtesy extended to OCR.

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If you have any questions regarding this letter, please contact Ms. Sherry Rosenblum, Equal Opportunity Specialist, at 312/886-8398.

Sincerely,


James E. Heffernan
Team Leader