



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS
MIDWESTERN DIVISION, CHICAGO OFFICE

NOV 8 2002

Rev. Michael Garanzini, S.J.
President
Loyola University Chicago
820 North Michigan Avenue
Chicago, Illinois 60611

Re: #05022078

Dear Rev. Garanzini:

On April 29, 2002, the U.S. Department of Education, Office for Civil Rights (OCR) received the above-referenced complaint filed against Loyola University of Chicago, specifically the University's law school. The complainant alleged that the University retaliated against her in its application of its grievance procedure to her. Specifically, the complainant alleged that the University applied disparate standards in its handling of her May 2001 sexual harassment grievance and grievances filed against her by two other students in October 2001.

As a recipient of Federal financial assistance from the U.S. Department of Education, the District is subject to the provisions of Title IX of the Education Amendments of 1972, which prohibit discrimination on the basis of sex. Additionally, these acts and regulations prohibit recipient institutions from retaliating against persons who file complaints under Title IX or who assert rights protected under these acts and their regulations. Accordingly, OCR had jurisdiction over this complaint.

OCR reviewed information provided by both the complainant and the University and has determined that there is insufficient evidence to conclude that the University retaliated against the complainant.

In a May 30, 2001 e-mail to an employee in the University's law library, the complainant asserted that another library employee had searched her book bag on several occasions, invaded her privacy by looking at her computer monitor and asked her out to lunch. The complainant requested that the University prohibit the employee from being within 25 feet of her.

The law library employee who received the complaint forwarded the complainant's May 30 e-mail to the Associate Director of the Law Library. According to the information provided by the University, the Associate Director attempted to contact the complainant several times before she was ultimately successful. A meeting was scheduled between the complainant, the Associate

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Director and the Director of Human Resources. The University asserts that the complainant declined to file a formal sexual harassment complaint under the University's sexual harassment policy. The complainant disputes that she declined to file a formal sexual harassment complaint. However, in her June 27, 2001, e-mail to the complainant, the Associate Director did refer the complainant to the grievance policy, and provided her with the electronic link to the policy.

The University's sexual harassment policy provides for both formal and informal remedies. Informal remedies are not prerequisite to a formal complaint. A formal complaint is initiated with a written incident report and processed in accordance with the University Conduct policy. According to the policy, informal remedies include asking the alleged harasser to cease the behavior and changing the work or academic environment of the person complaining.

In a June 27, 2001 e-mail to the complainant, the Associate Director described the status of the complainant's May 30 informal complaint. In the e-mail the Associate Director informed the complainant that the law library employee had been instructed to keep away from the complainant and informed the complainant of the employee's work schedule. The Associate Director also included the electronic link to the University's sexual harassment policy and asked the complainant to keep her apprised if anything else occurred. According to the University, the complainant never contacted the Associate Director again. The complainant informed OCR that she did not recall receiving the June 27 e-mail.

In addition to the above, the University informed OCR that the Associate Director interviewed the employee who admitted speaking with the complainant but denied he had engaged in inappropriate conduct. The Associate Director also interviewed a witness identified by the complainant who also denied having witnessed the alleged conduct. However, the University issued the employee a written warning for engaging in inappropriate behavior.

The complainant informed OCR that in either September or October 2001, she went to the University's Human Resources Office to complain about the same law library employee harassing her again. The complainant did not know the name of the person she spoke with in the Human Resources Office or the date she reported the harassing behavior. The complainant said that the person to whom she reported took notes and was a "blond woman" who worked for the Director of Human Resources. The complainant stated that she never heard a response from the University.

On October 24, 2001, two law school students complained to the School of Law's Associate Dean for Student Affairs that the complainant had physically assaulted them by pushing them and knocking one of them in the head with her book bag. The School's Associate Dean and the complainant's adviser met with the

complainant to discuss the complaints prior to initiating formal procedures pursuant to the School of Law's Code of Student Conduct.

The Code of Student Conduct states that the Associate Dean, once notified of the prohibited conduct, must notify the accused. If the accused denies the charges, the Associate Dean initiates an investigation of the charge, which may include a hearing depending on the results of the investigation.

On October 29, 2001, the complainant requested and was granted an immediate medical leave of absence from the School of Law by the School's Associate Dean. In his October 29 e-mail granting the complainant's request, the School's Associate Dean informed the complainant that he would suspend proceedings on the two complaints against her until she applied to return to the law school. The School's Associate Dean also indicated that due to the nature of the charges against her a hearing would likely commence if and when she returned to the University. To date, the complainant has not applied to return to the University.

Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex. Additionally, these acts and their regulations prohibit recipient institutions from retaliating against persons who file complaints under Title IX or who assert rights protected under these acts and their regulations.

A prima facie case of retaliation is established by showing that: 1) the injured party engaged in activity protected by the laws and regulations enforced by OCR; 2) the recipient was aware of the protected activity; 3) the recipient subjected the injured party to an adverse action; and, 4) there is evidence of a causal connection between the adverse action and the protected activity. Once a prima facie case is established, the recipient may then rebut the prima facie case by showing non-pretexual, non-discriminatory and non-retaliatory reasons for its actions.

OCR has determined that all four elements of a prima facie case have been met. The complainant engaged in a protected activity when she complained of sexual harassment in May 2001 and the University, through receipt of the May 2001 complaint and its subsequent actions to remedy the situation, was aware of the protected activity. Regarding an adverse action, the complainant asserts that the University retaliated against her because the School of Law's Associate Dean raised the possibility of a hearing when discussing the complaints filed against her. In addition, the University subjected the complainant to an adverse action when the University suspended its investigation of the October 24 claims against her. The short period of time between the complainant's May 27, 2001 e-mail and the October 2001 complaints against her and potential investigation of those claims allows one to infer a causal connection between the protected activity and the adverse action. However, when the School of Law's Associate Dean notified the complainant of the possibility of a hearing on the October 24 claims against her, he was following University procedures as stipulated in the University's

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Student Code of Conduct. Furthermore, the investigation of the October 2001 claims against the complainant was suspended because the complainant requested a medical leave of absence from the School of Law. These constitute nonpretextual, nonretaliatory justifications for the University's actions.

Based on the above, OCR has determined that there is insufficient evidence to conclude that the University retaliated against the complainant. Therefore, OCR is closing the complaint effective the date of this letter.

If you have any questions about this letter, please contact Ms. Amy A. Truelove, Senior Equal Opportunity Specialist, at 312/886-8428.

Sincerely,



Don Ray Poller
Director
Compliance Unit IV

Cc: (b)(7)(C)