



U.S. DEPARTMENT OF EDUCATION

400 Maryland Ave., SW

Washington, DC 20202-1475

Telephone (202) 453-6020 Facsimile (202) 453-6021; TDD 1-800-521-2172

e-mail: OCR.DC@ed.gov

OFFICE FOR CIVIL RIGHTS
SOUTHERN DIVISION

DISTRICT OF COLUMBIA OFFICE
District of Columbia, North Carolina, South Carolina, Virginia

February 9, 2011

(b)(6); (b)(7)(C)

RE: OCR Complaint No. 11-11-2031

Dear (b)(6); (b)(7)(C):

This letter is to advise you that on December 3, 2010, the District of Columbia Office of the Office for Civil Rights (OCR), U.S. Department of Education (the Department), received your complaint filed against Virginia Commonwealth University (the University), on behalf of a student (the Student) at the University. The complaint alleges that the Student was discriminated against on the basis of race (b)(6); (b)(7)(C) and age. Specifically, the complaint alleges that the Student filed a complaint with the University against a (b)(6); (b)(7)(C) male student after he sexually assaulted her. A hearing was held and the hearing panel members, who were predominantly (b)(6); (b)(7)(C) as was the accused student, ruled against her. The complaint also alleges that the University refused to provide the Student information as to how it reached its decision and did not allow her to appeal the decision. Further, the Student requested documents used in the hearing process and was told that the documents had been shredded.

On January 13, 2011, when OCR interviewed the victim, she told us that she intended for sex discrimination to be included as a basis for her complaint in addition to race discrimination. She alleged discrimination in the form of sexual assault as well as in the content and application of the University's sexual misconduct policies and procedures that it applies to all complaints of sexual misconduct. She also informed OCR that she did not intend for age discrimination to be included as a basis for her complaint.

OCR is responsible for enforcing certain Federal civil rights statutes and regulations, including Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d, and its implementing regulation, at 34 C.F.R. Part 100, which prohibit discrimination on the bases of race, color, or national origin in programs and activities that receive Federal financial assistance from the Department. OCR is also responsible for enforcing Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.* (Title IX), and its implementing regulation, at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any education program or activity receiving

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by fostering educational excellence and ensuring equal access.*

Federal financial assistance from the Department. The University is a recipient of such assistance from the Department. Therefore, the University must comply with Title VI, Title IX, and their implementing regulations.

Race Discrimination Allegation

OCR is dismissing the allegation of racial discrimination because there is not enough information to suggest that racial discrimination may have occurred. The Student stated that the University discriminated against her on the basis of race because the faculty members of the University Hearing Board panel were all (b)(6); (b)(7)(C) and the only (b)(6); (b)(7)(C) on the panel was a student who was not actively engaged in the hearing. However, the fact that most panel members were (b)(6); (b)(7)(C) is not enough for OCR to infer that the Student may have been treated differently on the basis of race. OCR asked the Student if anything happened during the hearing to suggest that the panel was treating her differently on the basis of race. She stated that the panel asked her a lot of personal questions about the alleged assault but did not ask the accused similar questions. It is too speculative to infer that the hearing panel asked her more personal questions about the alleged assault because she was (b)(6); (b)(7)(C) and the accused student was (b)(6); (b)(7)(C). Because there is not enough information to suggest that she may have been treated differently on the basis of race, OCR is closing the allegation of race discrimination as of the date of this letter and will take no further action on this allegation.

Sex Discrimination Allegation

Title IX prohibits sex discrimination in education programs and activities conducted by the University. Sexual harassment, including sexual assault, is a form of sex discrimination covered by Title IX. In this case, the alleged assault took place during an activity not sponsored by the University and at a location not owned by the University. In a January 13 e-mail, the Student told OCR that she and the accused student (b)(6); (b)(7)(C) (b)(6); (b)(7)(C), and that she was sexually assaulted in (b)(6); (b)(7)(C). She stated that the accused student (b)(6); (b)(7)(C) and it was (b)(6); (b)(7)(C). Thus, OCR does not have jurisdiction to review the University's decision in the hearing in her individual case. OCR will close this part of the sex discrimination allegation as of the date of this letter.

However, the complaint also alleges problems with the University's sexual misconduct policies and procedures that it applies to all complaints of sexual misconduct. OCR does have jurisdiction to review the University's sexual misconduct and sexual harassment policies and procedures to determine if they comply with Title IX, both as written and in their application to complaints of sexual assault and harassment that occurred on the University's campus, at a location owned by the University, or at a program or activity sponsored by the University.

Because OCR has determined that it has jurisdiction over this allegation and that it was filed timely, it is opening this allegation for investigation. Please note that opening allegations for investigation in no way implies that OCR has made a determination with regard to their merits. During the investigation, OCR is a neutral fact-finder, collecting and analyzing relevant evidence from the complainant, the recipient, and other sources, as appropriate. OCR will ensure that its investigation is legally sufficient and is dispositive of the allegation, in accordance with the provisions of Article III of the *Case Processing Manual*.

Please note that the University is not permitted to intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the laws OCR enforces. If any individual is harassed or intimidated because of filing a complaint or participating in any aspect of OCR case resolution, the individual may file a complaint alleging such treatment.

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, information that, if released, could constitute an unwarranted invasion of personal privacy.

We will be in touch with you periodically during the investigation of your complaint. In the meantime, if you have questions regarding the complaint, you may contact Deborah Kelly, the investigator assigned to the complaint, at (202) 453-5919 or by e-mail at Deborah.Kelly@ed.gov.

Sincerely,

(b)(6); (b)(7(C))

Sheralyn Goldbecker
Team Leader, Team IV
District of Columbia Office

cc: (b)(6); (b)(7(C))