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Foundation for Individual Rights in Education

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United States Department of Education
 Office for Civil Rights
 Region 1
 John W. McCormack Post Office and Courthouse, Room 701
 Post Office Square
 Boston, Massachusetts 02109-4557

April 1, 2003

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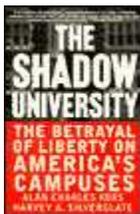
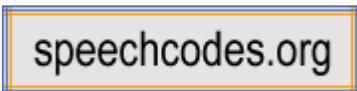
Lawrence H. Summers Ph.D.
 President
 Harvard University
 Massachusetts Hall
 Cambridge, Massachusetts 02138

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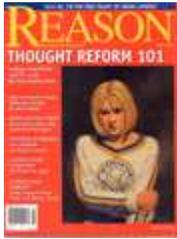
Re: Complaint No. 01-02-2041

Dear Dr. Summers:



Read excerpts from *The Shadow University* by Alan Charles Kors & Harvey A. Silverglate.

This is to advise you that the Office for Civil Rights has completed our consideration of the above-referenced complaint, which was filed against Harvard University. The Complainant alleged that revisions to the peer dispute administrative procedures of Harvard College (College) discriminated against students, mostly female, who filed complaints of sexual assault. Specifically, the Complainant alleged that the amendments to the grievance procedure would deprive students of access to a prompt and equitable resolution of complaints, as required by Title IX of the Education Amendments of 1972 (Title IX), by requiring grievants to present information showing “sufficient independent corroboration” of their claims prior to the College initiating an investigation. The Complainant further alleged that other types of peer-to-peer discrimination complaints, such as racial or sexual harassment, are handled under another standard which does not require that the grievant provide a list of supporting information to get a full investigation. Because



Read *Thought Reform 101* by Alan Charles Kors.



Read *Memo to Free Speech Advocates* University of

Wisconsin-Madison by Harvey A. Silverglate.

Foundation for Individual Rights in Education, Inc.
210 West Washington Square
Suite 303
Philadelphia, PA 19106
Phone: (215) 717-3473
(717-FIRE)
Fax: (215) 717-3440
Email: fire@thefire.org

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OCR's investigation did not find sufficient evidence to support a violation of Title IX, we are closing the case as of the date of this letter.

OCR accepted this complaint for processing because the allegation falls under Title IX. Title IX prohibits discrimination on the basis of sex in any program, or activity receiving Federal financial assistance from the U.S. Department of Education. The regulation implementing Title IX at 34 C.F.R. Section 106.8 (b), requires the College to adopt grievance procedures providing for the prompt and equitable resolution of student complaints alleging actions prohibited by Title IX.

At the time OCR received this complaint, the amendments to the procedures had been recently adopted and the details for implementing the changes had not yet been developed. OCR discussed the allegations with the Complainant and we agreed that the scope of OCR's review would be limited to whether the revisions to the procedures as adopted denied students access to a prompt and equitable process. Consequently, OCR did not look at the actual implementation of the procedures or the procedures generally. In making our determination, we reviewed the new portions of the procedure and the College's guidance for students and staff regarding the revisions. We also spoke with College representatives responsible for implementing the process. OCR discussed the information with both parties and their representatives. We also reviewed additional evidence presented by the Complainant.

The College's Process:

The Administrative Board of Harvard College (Ad Board) is the committee of the Faculty of Arts and Sciences (FAS) responsible for the application and enforcement of undergraduate academic regulations and standards of social conduct. OCR found that the FAS Faculty Council approved revisions to the Ad Board procedures in January 2002, which became effective in September 2002. The Ad Board procedures cover all forms of peer-to-peer disputes.

In June 2002, "Information on Harvard College Procedures for Handling Student Peer Disputes" was published on the College's web site. In this information, the phrase "sufficient independent corroboration" was used to describe the requirement. In September 2002, the procedures were published in Chapter 3 of *The Administrative Board of Harvard College Guide for Students 2002-2003*. In this publication, the phrase

“corroborating information,” rather than the term “sufficient independent corroboration”, was used. During the fall semester, the College Ad Board’s web site was amended to include an explanatory piece, which states, in part, that corroborating information could include “supporting information [which] includes virtually anything that helps to corroborate a student’s account, including, for example, diary entries or conversations with roommates or friends; it is not limited to eyewitnesses, confessions, or forensic evidence.”

In reviewing the procedures, OCR established the following facts.

When a student files a formal complaint against another student through the Ad Board procedures, the grievant is asked to submit a detailed written statement summarizing his or her complaint along with a descriptive list of all sources of information that may help to corroborate the allegations. The complaint is then forwarded to the secretary of the Ad Board who initiates a preliminary investigation. According to information submitted to OCR by the College, “Once a student’s statement and appendix is submitted, it will be reviewed by [the secretary of the Ad Board] who will collect any other statements or documents that help to corroborate the student’s account...the process is designed to be somewhat fluid; as [the secretary of the Ad Board] reviews a student’s appendix, he may contact the student to raise other potential sources of supporting information.” (*Letter from the College January 30, 2003*). A student grievant’s resident dean serves as the student’s representative on the Administrative Board and is available to assist the student with the statement to the Ad Board by reviewing it for “completeness or clarity and to anticipate questions the statement may raise in the minds of Board members.”

The College advised OCR that, under the new procedures, the Ad Board will proceed with the preliminary stage of investigation whether or not a student filing an Ad Board complaint has a list of supporting information. The Ad Board will request that the respondent student prepare a written statement including a list of supporting information, to be submitted to the Ad Board secretary. After both students have submitted statements, the full Ad Board will review the complaint, and decide on the next course of action, which may be to send it to subcommittee for further investigation and hearing, obtain additional information, or decline to pursue the complaint if further investigation appears unlikely to result in any additional information which would assist in assessing the credibility

of one student's word against another's.

According to informational material presented to student organizations and staff on the new Ad Board procedures for peer disputes, "assessments about credibility are also made by the Board and may themselves serve a kind of supporting information."

The College, in its guidance to students and staff, has stated that the new procedures have not created any change in evidentiary standard used by the Ad Board in reaching a determination in sexual assault cases. They provided information to OCR indicating that the Ad Board also "will consider information pertaining to the relative credibility of the two principal students, including not just the detail and consistency of each student's statement but also the absence of corroborative information where one logically might expect." In addition, the Ad Board will also consider any history of prior complaints against the respondent as one of several factors in assessing credibility.

One change from the old procedures is that now, as part of the preliminary investigation, the respondent's statement is filed without a charge being issued. This is followed by a full board review for a decision on further action. Under the old procedures, after a grievant's statement was submitted, a charge was issued against the respondent, who would then be asked to submit a statement in response to the complaint. Then a subcommittee would conduct interviews and gather evidence. Following the subcommittee's investigation, the full board held a hearing.

According to the Handbook for Students, the same Ad Board procedures apply to formal complaints in cases of peer-to-peer racial or sexual harassment, as well as assault, with the same requirement for supporting information to warrant the second stage of investigation. OCR was told by the College that the "Formal Complaint" procedures outlined on page 302 of the Handbook, in which a Hearing Officer conducts an inquiry and prepares a report, only apply if the alleged harasser is a faculty or staff member.

OCR's Analysis:

OCR considered whether the revisions to the College's procedures employed sufficient process to ensure that any complaints of sexual assault are adequately addressed. OCR found that, as currently described by the College, these changes do not deny a student with a complaint of

sexual assault access to a prompt and equitable process for resolving the complaint. The revisions have created a two-part process. In the preliminary investigation phase, statements and lists of supporting information are sought from both the grievant and the respondent, with the assistance of designated College advisors. The student grievant has considerable opportunity to create the minimal record that would ensure a further investigation that then leads to a full board hearing. However, at the preliminary investigation phase, and even without the provision of specific supporting information, the full Ad Board reviews the complaint, as well as any prior information regarding the respondent, and makes assessments of credibility. This same process is used for all peer-to-peer complaints. There are no additional burdens placed on students who have complaints of sexual assault. Title IX does not prohibit the use of due process. Nor does it set specific standards of how much process required. Rather, it allows schools considerable latitude in developing their procedures. In particular, Title IX does not prohibit a process that limits the proceedings if it appears from a reasonable preliminary inquiry that further investigation would not produce evidence that could resolve the complaint. The revisions at issue here, as described in the College's most recent publications and as explained to staff and students, do not unduly interfere with a student complainant's access to a prompt and equitable process for resolving complaints of sexual assault.

Based on the above, OCR did not find sufficient evidence to establish that the changes to the grievance procedures, as explained by College staff, deprive students of access to a process providing a prompt and equitable resolution of their complaints. This letter addresses only the limited issue described above. It should not be construed to cover any other part of the grievance procedures, the implementation of the grievance procedures nor any other Title IX issue for which OCR has enforcement authority.

We would like to thank you, your staff, and especially Heather M. Quay, University Attorney, for the cooperation extended to OCR during the course of this investigation. If you have any questions, please contact me at (617) 223-9667 or Ruth Ricker, Equal Opportunity Specialist, by telephone at (617) 223-9680, or by electronic mail to ruth.ricker@ed.gov, or Donna L. Russell, Team Leader/Civil Rights Attorney, at (617) 223-9701, or donna.russell@ed.gov.

Sincerely,

Thomas J. Hibino
Director

Because Your Liberty is a Precious Thing
