



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS
MIDWESTERN DIVISION, CHICAGO OFFICE

MAR 08 2007

Ms. Jeanette Prickett
President
Olympia College
Skokie Campus
9811 Woods Drive, 2nd Floor
Skokie, IL 60077

Re: #05-06-2155

Dear Ms. Prickett:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above referenced complaint filed against Olympia College (College). The Complainant alleged that, from December 2005 through April 2006, a male employee of the College, a massage therapy instructor, subjected her to sexual harassment and the College failed to respond to her April 2006 report of the harassment. As a recipient of Federal financial assistance from the Department, the College is subject to the provisions of Title IX of the Education Amendments of 1972 (Title IX) and its implementing regulations at 34 C.F.R. Part 106 that prohibit discrimination on the basis of sex. Accordingly, OCR has jurisdiction over the complaint.

During its investigation of the complaint, OCR interviewed the Complainant and two witnesses named by the Complainant. OCR also reviewed documents obtained from the Complainant and the College. On February 6, 2007, OCR interviewed the President of the College, the Director of Education, and the massage therapy instructor on site and examined the massage therapy classroom.

College Policy and Procedure

The College includes its Statement of Non-Discrimination (Policy) in the catalog it provides to students at enrollment. The Policy states that the College does not discriminate on the basis of sex in its programs and activities. The Policy designates the College President as the Title IX coordinator and specifies that any complaint of sex discrimination be directed to the President. According to the Policy, the President is to act promptly and equitably to resolve such complaints.

The College's student handbook discusses student leaves of absence (LOA). The College permits a student to request an LOA not to exceed 180 days during any 12-month period. The requesting student is to document a legitimate extenuating circumstance that requires the student to interrupt his/her education. According to the College, such a circumstance may be the serious health condition of a child. To request an LOA, the student must submit a form to the Director

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of Education. Once a student's request for an LOA has been approved, if the student's lender had authorized disbursement of federal student financial assistance to the College, the student may be entitled to a refund. If a student has received a loan for tuition, the refund is made to the lender to reduce the student's loan debt.

The College's massage therapy program is designed to provide students with the basic knowledge, tools, ethical standards, and behavioral expectations that will enable them to successfully provide massage therapy in a variety of health care settings. The program consists of nine 20-class modules. Each module lasts approximately one month. A student may enter the program at the beginning of any of the nine modules. If a student misses 14 days in any one module, the student is automatically dropped from the program.

In its student enrollment package, the College states that a student in the massage therapy program is eligible to receive a massage table in the fourth module. The Director of Education explained that the cost of the massage table is approximately \$500 and is included in the cost of the massage therapy course. He explained that, if a student drops out without receiving the table, the cost of the table is refunded either to the student or, if the student received financial assistance, to the lender.

Facts

On December 20, 2005, the Complainant enrolled in the massage therapy program at the College. The Complainant recalled that, several weeks after starting the program, she and the instructor discussed the spelling of his name. She stated that, in order to illustrate how his name was spelled, the instructor lifted up his shirt and showed her his tattoo. The Complainant said that the instructor's behavior made her uncomfortable. She could not recall whether anyone witnessed this incident.

When interviewed by OCR, the instructor showed OCR the location of the tattoo by pulling down the neckline of his shirt. The tattoo is located on the instructor's chest, slightly below the neckline. He stated that the tattoo was visible to students when they practiced massage techniques on him. He stated that, at such times, his chest is exposed, revealing the tattoo. The Complainant acknowledged that students practiced massage therapy techniques on the instructor as part of the class. The instructor stated that the Complainant first commented about his tattoo when she saw the instructor being massaged by a male student in the class.

The Complainant related that, in February 2006, she telephoned the instructor to inquire about homework after she had missed a class. According to the Complainant, the instructor asked her to go out with him during this telephone conversation. The Complainant further claims that, after the February 2006 phone conversation, the instructor asked her go out on other occasions. She stated that these conversations occurred in the massage therapy classroom and in the cafeteria. The Complainant claimed that the student she named as a witness might have overheard the instructor asking her out on other occasions in the classroom and/or the cafeteria. However, the witness would not make herself available to OCR to be interviewed. In the interview with OCR, the instructor denied that he asked the Complainant out.

The Complainant further informed OCR that, in February 2006, the instructor touched her inappropriately in class when she attempted to activate music on a CD player. According to the Complainant, she asked the instructor to assist her in activating the music. She asserts that the instructor brushed against her from behind. The instructor told OCR that he does not permit students to initiate playing of music in class and did not recall that the Complainant ever attempted to do this. Similarly, he denied that he ever made inappropriate physical contact with the Complainant. The Complainant told OCR that she could not provide any witnesses to this incident.

By the end of March 2006, the Complainant had only completed three of the nine required modules in the massage therapy program. In early April 2006, she stopped attending class because her son was hospitalized. On April 3, 2006, she contacted the instructor to advise him of the reason for her absence, i.e., her son's hospitalization. The Complainant related that the instructor advised her that she could skip a module and return to the program thereafter, but did not advise her of College policy regarding an LOA. She did not apply for a leave of absence as required by College policy set forth in the student handbook.

On April 21, 2006, after learning that she had been involuntarily withdrawn from the massage therapy program because she had missed 14 days in a module, the Complainant wrote a letter addressed to whom it may concern. She delivered the letter to the College President's office. In the letter, the Complainant explained that she had been absent from the massage therapy classes due to her son's hospitalization and requested that the College grant her an LOA. In that letter, she stated that she was "enthused" with the massage therapy program and expressed a desire to return to the program in June 2006. The letter did not indicate that the Complainant believed that she had been subjected to sexual harassment. The College President acknowledged that she received this letter.

On April 30, 2006, the Complainant sent a second letter to the College, again addressed to whom it may concern. In that letter, the Complainant indicated that errors had been made in the number of days she was listed as absent and asked that her attendance records for March 2006 and her cumulative grade point average be corrected. The letter did not indicate that the Complainant believed that she had been subjected to sexual harassment. The Complainant sent copies of the April 30 letter to the instructor, the College President, and the Director of Education.

After receiving the April 30 letter in early May 2006, the instructor called the Complainant and referred her to the Director of Education to correct her attendance record and grades. The Complainant characterized the instructor as angry and aggressive during the phone call. The Complainant further recounted that the instructor called her later that same day and left a voice mail message telling her to disregard the previous call. The Complainant did not provide OCR recordings of these calls or witnesses who overheard these calls. The instructor acknowledged placing the initial call but did not indicate that he showed any anger or aggression toward the Complainant. He did not recall leaving a message with the Complainant later that day.

Shortly thereafter, in May 2006, the President met with the Complainant to respond to the concerns she expressed in her earlier letters. The President stated that the meeting focused on

the Complainant's involuntary withdrawal from the College. The Complainant viewed the withdrawal as detrimental to her because she expressed a belief that the withdrawal could prevent her from continuing her education. Although the Complainant told OCR that she told the President that the instructor had a "conflict of interest," the President did not recall the Complainant making that statement. The President stated that the Complainant never mentioned the instructor or the alleged sexual harassment to her in the meeting. There were no other parties in the meeting. The President stated that she tried to resolve the Complainant's concerns by providing her information about how to file for an LOA. During this meeting, the Complainant also inquired about receiving a refund of her tuition and fees. The President directed her to the College's finance department.

Between early May and June 16, 2006, the Complainant met with College finance department staff, including the Director of the finance department and consulted with her lender regarding the calculation of the refund. The President explained to OCR that, consistent with its student loan policy, the College issued a partial refund to the Complainant's lender. However, the Complainant was not satisfied with this because she expected the College to issue the refund to her. The Complainant also met with the College's Director of Education to formally request an LOA and to address the issues raised in the April 30 letter, i.e., attendance and G.P.A. The Director of Education corrected the Complainant's attendance record and G.P.A.

On June 16, 2006, the Complainant filed a complaint with the Private Business and Vocational Schools Unit of the Illinois State Board of Education because she believed that the College had not acted properly in reimbursing her. To resolve this complaint, the President and the Director of the finance department met with the Complainant on June 19, 2006. The President stated that, once again, the Complainant did not mention employee-to-student sexual harassment at this meeting. The Complainant concurs that, at this meeting, the only topic of discussion was reimbursement.

Although the Complainant notified the College that she would return to the massage therapy program in June 2006, she did not return. On August 3, 2006, she filed the subject complaint with OCR. In September 2006, she entered a massage therapy program at another institution. The Complainant believes that she should have received a massage therapy table and a full refund from the College. She maintains that she did not return to the College after her LOA because of the instructor's behavior.

In December 2006, after receiving details of the allegation of employee-to-student sexual harassment from OCR, the College proceeded to investigate the matter. The College President reviewed the instructor's personnel records and found no complaints against him. Both the College President and the Director of Education described the instructor as a dependable and knowledgeable instructor. The College Corporate Counsel interviewed the instructor. The College President and the Director of Education were present during the interview. The instructor denied the allegation. The College staff believed that the instructor was credible. The representatives of the College Student Affairs office attempted to contact all 17 students who were in the Complainant's massage therapy class in March 2006 to determine whether any of the students observed inappropriate behavior on the part of the instructor. Only three of the 17 students agreed to be interviewed. The College provided OCR with the questions asked of the

students and their responses. None of those students reported any inappropriate behavior on the part of the instructor. The College also contacted the Complainant to attempt to interview her; however, she told OCR that she declined to be interviewed.

During its investigation of the complaint, OCR interviewed the Complainant and two witnesses named by the Complainant, i.e., the Complainant's mother and the father of the Complainant's daughter. The Complainant's mother stated to OCR that the Complainant informed her that the massage therapy instructor brushed up against the Complainant from behind and repeatedly asked the Complainant out. The father of the Complainant's daughter stated to OCR that the Complainant informed him that the instructor brushed up against the Complainant from behind, showed the Complainant his tattoo, and tried to flirt with the Complainant. Neither witness personally observed the instructor's actions. Although the Complainant named a third witness whom OCR attempted to interview, another student in the Complainant's massage therapy class, that witness would not make herself available to OCR for an interview.

Applicable Statute and Regulations

The Title IX regulation, at 34 C.F.R. 106.31(a), states 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 educational program or activity operated by a recipient. Sexual harassment is unwelcome conduct of a sexual nature. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. Sexual harassment of a student can deny or limit, on the basis of sex, the student's ability to participate in or to receive benefits, services, or opportunities in the recipient's program. Sexual harassment of students can, therefore, constitute a form of sex discrimination prohibited by Title IX. A hostile environment is created if sexually harassing conduct by an employee is sufficiently serious that it denies or limits a student's ability to participate in or benefit from the recipient's program based on sex. The determination of whether conduct rises to the level of a hostile environment must be determined based upon the totality of circumstances involved.

Title IX requires that, once a recipient has notice of possible sexual harassment of a student, it is to take immediate and appropriate steps to investigate or otherwise determine what occurred and take prompt and effective steps reasonably calculated to end any harassment, eliminate a hostile environment if one has been created, and prevent harassment from occurring again.

Analysis

The Complainant alleged that, from December 2005 through April 2006, a male employee of the College, a massage therapy instructor, subjected her to sexual harassment and the College failed to respond to her April 2006 report of the harassment. In the course of its investigation, OCR interviewed the Complainant and her witnesses. OCR also interviewed relevant College employees on site. Although two of the Complainant's witnesses confirmed her account of the instructor's objectionable behavior, their testimony was based solely upon the Complainant's later recounting of the events to them, not their personal observation of the incidents. The Complainant identified only one other witness to the alleged incidents and this witness, who was a student at the same time as the Complainant, declined to be interviewed by OCR. The

instructor himself denied the Complainant's assertions. Moreover, other students who were in the Complainant's class and agreed to participate in the College's investigation stated that they did not observe any objectionable behavior by the instructor. Thus, OCR determined that the evidence is insufficient to establish that the Complainant was subjected to sexual harassment.

The Complainant also contends that the College did not respond to her April 2006 report of employee-to-student sexual harassment. The Complainant believed that her informing the College that the instructor had a "conflict of interest" was sufficient to constitute a report of sexual harassment. Even if this were sufficient notice, the College denied that the Complainant made this report and informed OCR that it first learned of the possible sexual harassment when learning of the present OCR complaint. Accordingly, OCR determined that the evidence was insufficient to establish that the Complainant provided the College with notice of such harassment, either in meetings with the College President or by letter in the 2005-06 academic year. Moreover, once the College received notice of possible sexual harassment as part of OCR's complaint processes, it took immediate and appropriate steps to investigate the incidents of alleged employee-to-student sexual harassment, including unsuccessfully attempting to interview the Complainant.

Based on the above, OCR concludes that the evidence is not sufficient to substantiate that, from December 2005 to April 2006, the massage therapy instructor subjected the Complainant to sexual harassment and that College failed to respond to the Complainant's report of the harassment. OCR, therefore, is closing this complaint effective the date of this letter. OCR wishes to thank you and your staff for the cooperation and courtesy extended to OCR. If you have any questions about this letter, or seek further information, please contact Leo Stopa, Senior Investigator, of my staff, at 312-730-1605.

Sincerely,



Madonna T. Lechner
Team Leader

cc: Andrew E. Ainsworth, Corporate Counsel
Corinthian Colleges, Inc.