

DEPARTMENT OF EDUCATION

JUL 01 2003

Ms. Maria Hesse
 President
 Chandler/Gilbert Community College
 2626 East Pecos Road
 Chandler, Arizona 85225

Re: Chandler/Gilbert Community College
 Case number 08032029

Dear President Hesse:

On January 9, 2003, the U.S. Department of Education, Denver Office for Civil Rights (OCR), received a complaint filed against Chandler/Gilbert Community College (College). Ms Keiko Morimoto (complainant) alleged that the College discriminated against her on the basis of sex. Specifically, the complainant alleged that an instructor subjected her to different treatment in the classroom. The complainant also alleged that the instructor discriminated against her in calculating her final grade. Further, the complainant alleged that the College retaliated for her raising an allegation of discrimination based upon sex by not permitting her to retake a test unless she wrote an apology to the instructor.

Legal Standard

OCR investigated this complaint pursuant to Title IX of the Education Amendments of 1972 (Title IX), and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in education programs and activities that receive funds from the U.S. Department of Education. Additionally, individuals filing a complaint, participating in an investigation, or asserting a right under Title IX are protected from retaliation or intimidation by 34 C.F.R. § 106.71, as it incorporates 34 C.F.R. § 100.7(e). The College is a recipient of Federal financial assistance from the U.S. Department of Education and is, therefore, subject to the requirements of Title IX.

OCR's Analysis

In evaluating different treatment allegations, OCR determines what action the College took, determines whether applicable policies were followed, and compares the student's treatment to other similarly situated students. If the College failed to follow its policies or subjected the student to different treatment than similarly situated students, OCR then determines whether there is a legitimate nondiscriminatory reason for the treatment, and determines whether the reason is a pretext for discrimination. Below is a separate analysis for each allegation.

FILE
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OFFICE	SURNAME	DATE	OFFICE	SURNAME	DATE	OFFICE	SURNAME	DATE
EDS	W.P. Allen	6/27/03						
AA	Clayton H. Boyd	6/27/03						
SM	Clay	6/27/03						

OCR's investigation included interviews with the complainant, witnesses, and the instructor of AMT270, and a review of documents provided by the College and the complainant. Please see the factual and legal bases for our conclusions below.

During a telephone interview with the complainant and in documents supplied by the complainant, she alleged that the instructor of AMT 270 would treat her with "general contempt" and would "ignore me and my questions." In order to corroborate the allegation of different treatment, OCR contacted several witnesses identified by the complainant. These witnesses were students in AMT 270 with the complainant. The complainant was the only female student in the class. The responses to the interview questions were consistent. The identified students could not remember any incidents where the complainant was treated differently than other students. In fact, the witnesses stated that on many occasions they saw the instructor taking extra time to attempt to answer the complainant's questions. Two witnesses stated that they observed the instructor spending breaks or lunchtime with the complainant, attempting to clarify issues raised in class. When asked if they ever saw any type of different treatment from the instructor toward the complainant, each witness responded negatively. Based upon these interviews, OCR could not substantiate that the adverse actions alleged by the complainant occurred. We did not find a violation regarding this allegation.

The complainant alleged that the instructor discriminated against her in calculating her final grade for AMT 270. The College supplied OCR with the grading criteria and the complainant's scores in the class. Based on these scores, OCR found that the complainant's final grade was calculated accurately. The complainant did not dispute the validity of any scores except for her final examination. The complainant had asserted to the College that her final exam was graded incorrectly. The College noted that the final exam in AMT 270 was an objective multiple choice and fill-in-the-blank exam where there was only one correct answer for each question. The instructor twice reviewed the complainant's tests and quizzes and determined they were graded correctly. OCR rarely reviews such substantive educational determinations. Because her final grade was calculated correctly, OCR could not substantiate that the adverse action alleged by the complainant occurred. OCR found that the complainant did not raise a compliance concern, as there was no factual basis for her allegation. Thus, OCR did not find a violation regarding this allegation.

The complainant also alleged that the College retaliated for her raising an allegation of discrimination based upon sex by not permitting her to retake her midterm examination unless she wrote an apology to the instructor. In evaluating allegations of retaliation, OCR uses the following general framework. To establish a prima facie case of retaliation, OCR determines: was the individual engaged in a protected activity, did the recipient have notice of the individual's protected activity, did the recipient take an adverse action contemporaneous with or subsequent to the protected activity, and was there a causal connection between the protected activity and the adverse action. If one of the elements cannot be established, then OCR finds insufficient evidence of a violation. If all of these elements establish a prima facie case, OCR next considers whether the recipient has identified a legitimate, non-discriminatory reason for taking the adverse action. If so, OCR then considers whether the reason asserted is a pretext for discrimination.

On June 6, 2003, the College informed OCR that it had offered the complainant an opportunity to retake the midterm examination without conditions, and have the new score calculated into her final grade. The College's offer of a retake exam resolves the allegation of retaliation.

Conclusion

OCR did not find the College discriminated or retaliated against the complainant. We are therefore closing this complaint as of the date of this letter.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will protect personal information to the extent provided by law. The Department of Education regulation prohibits the College from intimidating or harassing anyone who files a complaint with our office or who takes part in an investigation.

We thank you for the cooperation and efforts of College staff throughout the investigation, and mention in particular the support of Ms. Rebecca Currey, Assistant General Counsel. If you have any questions regarding this matter please do not hesitate to call me at (303) 844-4506, or Mr. Val Gonzalez, Equal Opportunity Specialist, at (303) 844-5929.

Respectfully,

L. Thomas Close
Supervisory Team Leader

cc: Ms. Rebecca Currey
Assistant General Counsel