



REGION IX
 Old Federal Building
 50 United Nations Plaza, Room 239
 San Francisco, California 94102

UNITED STATES DEPARTMENT OF EDUCATION
 OFFICE FOR CIVIL RIGHTS

July 11, 2000

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| OCR Chron. File | <input checked="" type="checkbox"/> |
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Warren Baker
 President
 California Polytechnic State University, San Luis Obispo
 San Luis Obispo, California 93407

(In reply, please refer to Docket Number 09-00-2045.)

Dear President Baker:

On February 18, 2000, the U.S. Department of Education (Department), Office for Civil Rights (OCR), notified you that OCR had received a complaint filed by (b)(7)(C) [redacted] (hereinafter the complainant), against California Polytechnic State University, San Luis Obispo (University) alleging that the University discriminated against Josephine Sepulveda (hereinafter student), based on sex in violation of Title IX of the Education Amendments of 1972 (Title IX). The complainant alleged that, after the student reported that she had been sexually assaulted and harassed by another student on campus from late 1997 through 1999, the University failed to take immediate and appropriate steps to investigate her allegations and implement corrective actions. The complainant also alleged that the University's failure to take any steps to prohibit the sexual harassment of the student or to discipline the accused student allowed a sexually hostile environment to exist.

OCR enforces Title IX as amended, 20 U.S.C. § 1681 et seq., and its implementing regulation, at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex and in activities operated by recipients of Federal financial assistance. The University receives funds from the Department and is subject to Title IX and its implementing regulations; therefore, OCR has jurisdiction to resolve this complaint pursuant to Title IX.

In investigating this complaint, OCR reviewed documents provided by the complainant and the University and conducted telephone interviews with the complainant, the student and the University and found the University to be in compliance with Title IX with respect to the issues raised in this case. The following is a summary of the applicable legal standard, factual findings and conclusions reached regarding the complaint.

Legal Standard

The regulation implementing Title IX, at 34 C.F.R. § 106.31, states that no person shall, on the basis of sex, be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination by a recipient of Federal financial assistance in any of its programs or activities. Section 106.8(b) requires recipients to adopt and publish complaint procedures that provide for the prompt and equitable resolution of complaints alleging discrimination on the basis of sex, including sexual harassment.

Under the OCR Guidance, "Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties." 62 Fed. Reg. 12034, 12039-12040. (1997), sexual harassment of one student by another student which creates a hostile environment is a form of sex discrimination prohibited under Title IX. Hostile environment sexual harassment can be created when conduct of a sexual nature, which can include unwelcome sexual advances and other verbal, nonverbal, or physical conduct of a sexual nature, are sufficiently severe, pervasive or persistent enough to interfere with a student's ability to participate in or benefit from an education program or activity or to create a hostile or abusive educational environment.

Once a recipient learns of possible sexual harassment of a student by others, Title IX requires the recipient to immediately investigate and, if it finds harassment occurred, to eliminate the effects of the harassment, and to prevent the harassment from recurring.

Factual Summary and Analysis

The complainant alleged that the University failed to take immediate and appropriate steps to take corrective action after the student reported that she had been sexually harassed and sexually assaulted by another student. The complainant also alleged that the University's failure to take any corrective action against the accused student allowed a sexually hostile environment to exist on the campus.

OCR learned that on October 14, 1999, the student wrote to the University President and reported that she had been raped and sexually harassed from 1997 through 1999 by another student. The University's Coordinator of Campus Student Relations and Judicial Affairs (Coordinator of Judicial Affairs) provided OCR evidence of the steps taken, thereafter, by the University.

On October 22, 1999, the Coordinator of Judicial Affairs contacted the student by telephone. She met with the student on November 3, 1999. The Coordinator of Judicial Affairs sent a letter to the accused student, on November 5, 1999, and requested that he schedule an appointment with her to discuss the allegations that

had been made against him. The letter advised the accused student that the administrative appointment was required. After taking additional attempts to contact the accused student, the University met with him on December 21, 1999.

The accused student denied the allegations made against him and submitted that he and the student had previously had a consensual relationship. The University interviewed the student, the accused student and witnesses. The University also reviewed evidence obtained by both the University police department and by the city police department in their investigations of the alleged crime.

After a review of the evidence, the Coordinator of Judicial Affairs determined that there was insufficient evidence to support the allegations made against the accused student. The Coordinator of Judicial Affairs informed the University President and the student that she would not proceed with disciplinary charges against the accused student or take action pursuant to the University's disciplinary process. On January 7, 2000, she met with the complainant and the student and discussed the results of her investigation with them.

During its investigation of this complaint, OCR reviewed the University's Policy Prohibiting Sexual Harassment and Procedural Guidelines (Guidelines) and found that they are in accordance with the Department's "Sexual Harassment Guidance" and that they appear to have been followed in its investigation of this case. OCR also found that the University responded promptly to the student when it learned of her allegations of sexual harassment, that it acted according to its Guidelines in conducting its investigation and that it notified the student of its decision.

OCR noted that the University's published Guidelines include an appeal procedure for complainants. The University's Human Resource Manager informed OCR that investigators inform students verbally of the appeal procedures and that published booklets are also provided to students.

On January 12, 2000, the University received a letter from the complainant that stated his concern that the University had failed to properly address the complaint that had been made by the student. The University's Vice President for Student Affairs responded in writing to the complainant, reviewed the complainant's concerns and referred him to the University's Ombudsman. The Ombudsman stated that, although he has not heard from the complainant with respect to this matter, he is available to assist the complainant with his concerns.

Based on the foregoing, OCR finds that there is insufficient evidence to support a finding that the University allowed the sexual harassment of the student or permitted the existence of a sexually hostile environment in violation of Title IX. OCR is closing this complaint as of the date of this letter.

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OCR routinely advises recipients of Federal funds and public educational entities that Federal regulations prohibit intimidation, harassment or retaliation against those filing complaints with OCR and those participating in the complaint resolution process. Complainants and participants who feel that such actions have occurred may file a separate complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related records on request. If OCR receives such a request, it will seek to protect, to the extent provided by law, personal information which, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

Your cooperation is appreciated. If you have any questions, please contact Cheryll Crane, Equal Opportunity Specialist, at (415) 556-4243 or David R. Rolandelli, Team Leader, at (415) 556-4152.

Sincerely,



H. Stephen Deering
Program Manager