



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

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Roy Romer
Superintendent
Los Angeles Unified School District
450 North Grand Avenue, Room A223
Los Angeles, California 90012

(In reply, please refer to Docket Number 09-00-2056.)

Dear Superintendent Romer:

On February 23, 2000, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received a complaint from (b)(7)(C) against the East Los Angeles Occupational Center (ELAOC), part of the Los Angeles Unified School District (District). The complainant alleges that in September 1999 a Cosmetology instructor at ELAOC subjected her to sexual harassment. The complainant filed an internal complaint with ELAOC over this incident. The complainant alleged that ELAOC officials have failed to investigate the complainant's internal complaint. The complainant also alleges that since the filing of the internal complaint, the instructor continued the pattern of sexual harassment towards her. The complainant also alleges that the instructor retaliated against her for filing the complaint by continuing the inappropriate conduct, by yelling at her in class and sending her to the principal for justified absences, and by wrongfully removing her from the Cosmetology class.

OCR enforces Title IX of the Education Amendments of 1972 (Title IX) and its implementing regulation found at 34 Code of Federal Regulations (C.F.R.) Part 106. Title IX prohibits discrimination on the basis of sex in education programs and activities operated by recipients of Federal financial assistance. ELAOC receives funds from the Department and is subject to Title IX and the regulation.

The Title IX regulation at 34 C.F.R. § 106.71 incorporates by reference the procedural requirements of Title VI of the Civil Rights Act of 1964 (Title VI). The Title VI regulation at 34 C.F.R. § 100.7(e) prohibits ELAOC from retaliating against complainants or from intimidating, threatening, coercing, or harassing complainants or anyone else because they filed a complaint with ELAOC or with OCR or because they participated in the complaint resolution process.

OCR has completed its investigation into the allegations raised in the complaint. OCR reviewed documents provided by the District and the complainant. OCR also interviewed the complainant, and the District provided OCR with information from relevant ELAOC personnel including a number of written witness statements. OCR finds that ELAOC investigated the complainant's original charge of sexual harassment and that the investigation met Title IX standards. However, ELAOC officials failed to investigate the complainant's subsequent complaint alleging retaliation by the same ELAOC instructor, in contravention of the District's own Title IX complaint procedures. As to the allegations concerned with retaliation, the complainant did not provide sufficient information for OCR to complete its investigation. OCR has resolved the issues dealing with the internal grievance and retaliation as described below.

The District provided OCR two policy documents concerning the District's policies and procedures for addressing Title IX complaints, including complaints concerning sexual harassment. The documents are entitled Bulletin No. L-5 Sexual Harassment Policy-Students and Bulletin No. L-4 Title IX Policy/Student Grievance Procedure, dated July 30, 1998. The policy documents define sexual harassment, provide general guidance to staff and students on how to file and investigate such complaints, and describe both an informal and formal process for investigating and resolving student complaints of sexual harassment.

The informal process involves a student discussing his/her complaint with the school's Title IX complaint manager or designee, documenting the complaint, interviewing the parties involved, attempting to resolve the situation in an informal manner, and documenting what actions were taken to resolve the issues. The formal process is used whenever the complaint cannot be resolved informally or when the student chooses to use this process in lieu of the informal process. The formal process includes an investigation into the student's charges with a written report of the investigative findings. The sexual harassment policy includes information on how to appeal the findings. There are four appeal options that include a student appealing to: (1) the District's Title IX Coordinator in the District's Educational Equity Compliance Office (EECO), (2) the California State Department of Education's Gender Equity-Policy and Program Coordination Unit, (3) OCR, or (4) through a civil law remedy under the California Education Code. In the cases where the District handles the appeal, the District's Title IX Coordinator or designee will review the complaint using the same steps outlined for the initial complaint investigation and a written response will be provided to the complainant.

The Title IX complaint managers for ELAOC are Ms. Sara Gomez, Assistant Principal/Adult Counseling and Mr. Ron Ross, Assistant Principal/Operations.

ELAOC's Response to the Complainant's Charges of Sexual Harassment.

The complainant was a student at ELAOC during the fall 1999 semester. On October 4, 1999 the complainant made a verbal sexual harassment complaint with Ms. Sarah Gomez, ELAOC assistant principal. The complainant alleged that her cosmetology instructor touched her inappropriately and told her two jokes of a sexual nature. The assistant principal interviewed the complainant about her allegations and documented the incident using the District's sexual harassment record form. The assistant principal also provided the complainant with a copy and an explanation of the District policy and procedures for sexual harassment. On October 5, 1999, the assistant principal received the complainant's written complaint.

On the same day, both assistant principals interviewed the instructor in question and provided the instructor with a copy and an explanation of District policy and procedures regarding sexual harassment. On October 6, 1999, both assistant principals received a written statement from the instructor answering the complainant's allegations.

The instructor's written response stated that at first the complainant was very anxious to assist him in the classroom, passing out class materials and answering the telephone in his room during his lectures. During a conversation with the complainant, he asked her what type of work she had done. She responded that she had been a nurse but quit after two years because of the abuse some patients and doctors subjected her to. The instructor stated that, in an attempt to cheer the complainant up, asked her if she would like to hear a joke about a doctor. The instructor stated that the complainant replied "yes", the instructor told the complainant the joke, and the complainant laughed a little. The instructor also acknowledged that he put his hand on the complainant's shoulder one time (patted her shoulder) to express his thanks to the complainant for all her assistance in his class. The instructor stated that he did not recall any other instances of touching as alleged by the complainant.

The instructor recalled that sometime at the end of September 1999 the complainant told him that she did not like to be touched. The instructor asked the complainant to what "touching" was she referring. The complainant responded that she felt uncomfortable. The instructor stated that the only touching she must have been referring to was the incident where the instructor thanked the complainant for her classroom assistance by patting her shoulder with his hand. At that point, the instructor stated that he apologized to the complainant and ensured her that he would not touch her again. The instructor reported that after this conversation with the complainant, the complainant subsequently refused to listen or communicate with the instructor. The instructor reported that the complainant's pattern of behavior towards the instructor was to ignore him from that point on, even when he attempted to talk with the complainant directly about class projects and lectures.

On October 12-13, 1999 the ELAOC assistant principal interviewed six student witnesses who had workstations located in the proximity of the complainant's workstation and received written statements from each of these witnesses. The students reported that they had observed no unusual physical behavior on the part of the instructor towards the complainant. Further, none of the student witnesses reported observing any inappropriate conduct on the part of the instructor towards the complainant.

On October 27, 1999 the two assistant principals met with the instructor who admitted telling two jokes of a sexual nature in the presence of the complainant. The instructor was informed that ELAOC had found that no inappropriate physical contact had taken place between the instructor and the complainant. ELAOC officials informed the instructor that it had established that the instructor told two jokes of a sexual nature to the complainant and gave the instructor directives to cease and desist from telling jokes of a sexual nature to students or staff. The instructor was also advised of the District prohibition against retaliation. A copy of the memorandum documenting this meeting was placed in the instructor's personnel file.

On October 28, 1999 an administrative conference was held with the complainant in which the complainant was told the results of the ELAOC investigation. ELAOC reported to the complainant that it had found inappropriate behavior on the part of the instructor in telling her two jokes of a sexual nature but found no evidence of any inappropriate physical contact. The complainant was also informed that ELAOC concluded that the instructor's actions towards her did not rise to the level of sexual harassment and that the instructor had been counseled about his conduct and that a memorandum was placed in his file. The assistant principals indicated that the complainant expressed satisfaction with ELAOC's investigation and actions taken against the instructor. The complainant was provided with these findings in a letter dated November 15, 1999. The cover letter to the investigative report advised the complainant of the District's policy on confidentiality and retaliation. The complainant was also advised of her right to appeal and provided with the District's policy statement regarding sexual harassment outlined in Bulletin No. L-5, dated July 30, 1998.

On February 11, 2000 the complainant was dropped from the cosmetology class. According to ELAOC officials the complainant was removed from the class due to her failure to complete her assignments and her refusal to communicate with and follow instructions given to her by the instructor.

On February 23, 2000 the complainant filed an internal grievance with the District's EECO. The complainant alleged that since the filing of her original complaint in October 1999, the same instructor has retaliated against her by yelling at her in class, subjecting her to two additional instances of unwanted touching, and terminating her from the class without cause.

The EECO acknowledged the complainant's grievance in a letter to her dated February 29, 2000. ELAOC stated it would investigate two allegations: (1) that ELAOC personnel failed to eliminate the hostile environment created by a teacher's continuing unwelcome sexual advances towards the complainant after a sexual harassment complaint was filed by the complainant, and (2) ELAOC personnel retaliated against the complainant for the filing of the October 1999 sexual harassment complaint. The EECO also informed the complainant that it would investigate this complaint in accordance with the District's Title IX Policy/Student Grievance Procedure and provide the complainant with a written report informing the complainant of the results of ELAOC's findings, the conclusions, and whether any corrective action is required. EECO further informed the complainant of the District's prohibition against retaliation and again provided the complainant with a copy of the District Title IX Policy/Student Grievance Procedure.

On March 30, 2000 the EECO sent the complainant a letter in which it informed the complainant that it had closed the complainant's internal grievance without investigation. The letter stated that the District had been informed that the complainant had filed a complaint with OCR. The District stated that since the OCR complaint issues were the same as the issues raised in the complainant's internal grievance, the District was closing her grievance and would rely on OCR's findings and conclusions to resolve the complainant's grievance.

OCR was not able to reach a determination regarding the complainant's allegations of retaliation and continued sexual harassment because the complainant did not provide sufficient information for OCR to proceed with its investigation. OCR attempted numerous times to reach the complainant by telephone and sent a letter dated July 14, 2000 asking the complainant to provide more specific information concerning her allegations, but the complainant did not respond.

Conclusions

The Title IX regulation at 34 C.F.R. § 106.8(b) requires a recipient to adopt and publish grievance procedures providing for the prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by Title IX or the regulations.

OCR finds that ELAOC utilized the District's policies and procedures established under Bulletins No. L-5 and L-4 dated July 30, 1998, in responding to the complainant's sexual harassment complaint. These procedures include information on how to file complaints and how to appeal ELAOC investigative decisions. The complainant was provided with this information. OCR finds that ELAOC's response to the complainant's original October 1999 complaint was to conduct a thorough investigation into the allegations. The investigation included interviewing the instructor and a number of student witnesses and ELAOC officials issued a written

investigative report. The results of the investigation were that ELAOC found that the actions of the instructor towards the complainant, while inappropriate, did not constitute sexual harassment and ELAOC officials took appropriate action against the instructor to address his inappropriate conduct. The results of the investigation were provided to the complainant. OCR finds that the District's investigation of the October 1999 complaint met Title IX standards because the District investigated the issues identified by the complainant and applied the appropriate standard of law in reaching its determination.

OCR found that when the complainant filed an internal grievance with EECO on February 23, 2000, alleging retaliation on the part of the same instructor, the District failed to investigate the internal grievance in accordance with its own Title IX complaint procedures. Once the District was notified of the OCR complaint on March 29, 2000, the District closed the complainant's internal grievance on March 30, 2000 and relied upon OCR to resolve the grievance issues. The District's policies do not permit a grievance to be closed when it has been simultaneously filed with another agency. Although complainants have the option of filing complaints with OCR, as did the complainant in this case, the filing of the OCR complaint is a separate and independent process. Under Title IX, the District is responsible for ensuring that all students are provided with a learning environment free of sexual harassment or from retaliation. Although OCR finds the District's Title IX complaint procedures identify OCR as an option for students to address District findings that they are not satisfied with, OCR concludes that the District cannot identify OCR or substitute OCR as the primary investigative or appeal authority in the District's complaint/grievance process.

OCR finds that the District failed to investigate the complainant's internal grievance in accordance with its established Title IX policies and procedures in violation of § 106.8(b). As to the allegations concerned with retaliation, OCR was unable to investigate this issue because the complainant did not provide sufficient information for OCR to complete its investigation. After numerous attempts to reach the complainant by telephone and by letter dated July 14, 2000, OCR has lost contact with the complainant. Under OCR's resolution procedures, OCR may cease investigation of a complaint when the information received from a complainant does not provide sufficient detail to proceed.

Voluntary Resolution

After discussions between OCR and District representatives, the District agreed to enter into a voluntary resolution plan to address the above-noted concerns.

The District agreed to take the following actions:

1. The District will amend the District policy documents Bulletin No. L-5 Sexual Harassment Policy-Students and Bulletin No. L-4 Title IX

Policy/Student Grievance Procedure, dated July 30, 1998. The District will amend Section VI(B) of Bulletin No. L-4 and Section VII(B) of Bulletin No. L-5, both entitled "Formal Process", to clarify that the site administrator or other District administrator shall not cease the investigation of a complaint alleging sexual harassment (Bulletin No. L-4) or of a Title IX Grievance (Bulletin No. L-5) because the complainant has also filed a complaint regarding the same incident(s) with the U.S. Department of Education Office for Civil Rights. The District will provide OCR with a copy of the revised Bulletins for OCR approval no later than June 30, 2001.

2. Pending formal revision of the Bulletins, the District will immediately commence processing its sexual harassment complaints or Title IX grievances consistent with the requirements of Paragraph 1.

On October 11, 2000, OCR received the signed plan from the District. OCR has determined that the Plan, when fully implemented by the District, will resolve the complaint. Accordingly, OCR is closing this case as of the date of this letter.

OCR will monitor the District's implementation of its commitment as stated in the attached Plan. When the District implements the Plan, OCR will issue a letter closing the monitoring phase of this case, and no further action will be taken with regard to this complaint. If the District fails to implement the Plan, the District may be subjected to further OCR review, including further investigation.

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 that, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

If you have any questions concerning this letter, please contact Mr. Lee Robbins, the investigator assigned to this complaint, at (415) 556-4248.

Sincerely,



Charles B. Love
Program Manager

Enclosure

East Los Angeles Occupational Center
Los Angeles Unified School District
Docket Number 09-00-2056
Draft Voluntary Resolution Plan

In order to voluntarily resolve the allegations presented in the above-referenced complaint filed with the Office for Civil Rights (OCR) the Los Angeles Unified School District (District) agrees to take steps listed below. In doing so, the District does not admit any unlawful or wrongful acts or liability against the complainant in Docket No. 09-00-2056 or any other individual, and disclaims any liability to, or wrongful acts against the complainant or any person.

The District agreed to take the following actions:

1. The District will amend the District policy documents Bulletin No. L-5 Sexual Harassment Policy-Students and Bulletin No. L-4 Title IX Policy/Student Grievance Procedure, dated July 30, 1998. The District will amend Section VI (B) of Bulletin No. L-4 and Section VII (B) of Bulletin No. L-5, both entitled "Formal Process", to clarify that the site administrator or other District administrator shall not cease the investigation of a complaint alleging sexual harassment (Bulletin No. L-4) or of a Title IX Grievance (Bulletin No. L-5) because the complainant has also filed a complaint regarding the same incident(s) with the U.S. Department of Education Office for Civil Rights.

The District will provide OCR with a copy of the revised Bulletins for OCR approval by June 30, 2001.

2. Pending formal revision of the Bulletins, the District will immediately commence processing its sexual harassment complaints or Title IX Grievances consistent with the requirements of Paragraph 1 of this agreement.

Deanne Newman
Signature

10-11-00
Date