



U. S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

JUN 30 2009

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

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Ms. Denise Whittacker
President
San Bernardino Valley College
701 South Mount Vernon Avenue
San Bernardino, California 92410

(In reply, please refer to #09-03-2009.)

Dear President Whittacker:

The U. S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against the San Bernardino Valley College. The complainant alleged that the College subjected her to retaliation and discrimination. The issues OCR investigated were:

1. whether the complainant was expelled from the College in retaliation for making a sexual harassment complaint about a professor.
2. whether the complainant was expelled from the College because of her national origin (Hispanic).
3. whether the College and the professor sought a temporary restraining order against the complainant in retaliation for her complaint with OCR.

OCR investigated the complaint under the authority of Title IX of the Education Amendments of 1972 and Title VI of the Civil Rights Act of 1964, and their implementing regulations. Title IX prohibits discrimination on the basis of sex in education programs and activities operated by recipients of Federal financial assistance. Title VI prohibits discrimination on the basis of race, color or national origin in programs and activities operated by recipients of Federal financial assistance. The College receives funds from the Department and is subject to Title IX, Title VI, and the regulations.

OCR gathered evidence through interviews with the complainant and College administrators and professors. OCR also reviewed documents and records submitted by the College and the complainant.

OCR concluded that the evidence did not establish a violation of Title IX, Title VI or the regulations with respect to the issues investigated. The facts gathered during the

investigation, the applicable legal standards, and the reasons for our determination are summarized below.

Issue 1: Whether the complainant was expelled from the College in retaliation for making a sexual harassment complaint about a professor.

The complainant alleged that, during the spring 2001 semester, one of her professors sexually harassed her by making inappropriate verbal and physical advances toward her. She stated that she filed a grievance with college officials concerning this harassment, and that, because of this grievance, she was accused of improper conduct and ultimately expelled from the College.

Our investigation showed the following:

- During the 2000-2001 school year, the complainant was enrolled in a history class at the College. The complainant met with two College administrators during the spring of 2001 to discuss her interactions with the professor. According to notes these administrators prepared at the time, the complainant informed both of them that she had fallen in love with the course professor and believed that he had shown romantic interest in her, and had "led her on". Both administrators stated that, in response to their questions, the complainant stated that she had not been sexually harassed. The complainant denies this statement.
- During the spring 2001 semester, the complainant sent the professor a letter, and at least one e-mail describing her feelings and professing her love for him. While the complainant denies having sent such communications, the letter bears a signature that is identical to that used by the complainant in her communications with OCR.
- In May 2001, the complainant was instructed, verbally and in writing, not to contact the professor in person or by mail or e-mail. She was further informed that violations of these instructions would result in disciplinary action. The complainant subsequently sent e-mail messages to him and, according to the professor, visited his office on several occasions.
- On August 1, 2001, the complainant was formally suspended from classes at the College for the fall 2001 semester, and forbidden to be on campus. The reason provided in the notice of suspension was the complainant's failure to adhere to a written directive that she not contact the professor.
- On August 1, 2001, the complainant filed a grievance with the College, alleging that the professor had subjected her to intimidation, harassment, discrimination and sexual harassment. The grievance did not describe or include details of the alleged harassment. The College did not investigate the grievance. The complainant alleged

that the College never responded to her grievance; College administrators stated that the complainant informed them that she did not wish to pursue the grievance.¹

- In December 2001, the College informed the complainant that she could return as a student for the spring 2002 semester, but that she was to have no contact with the professor, and was to stay away from the building where his office was located. The complainant was informed that failure to comply with these restrictions would result in automatic suspension and/or expulsion.
- The complainant alleged that during the spring semester, the professor attempted to contact her by telephone and to approach her in person. The professor denies these contacts. The complainant did not allege that any of these attempted contacts were sexual in nature.
- In April 2002, the professor received an e-mail concerning the complainant from a sender identified as (b)(7)(C). The campus computer center traced this e-mail to a computer checked out to the complainant, and concluded that she had sent the e-mail. The complainant was informed that, based on this forbidden contact, she would be expelled from the College.
- The complainant appealed her suspension and expulsion in hearings in May and June of 2002. She alleged that she was not provided a fair opportunity to be heard at these hearings. She specifically alleged that she did not send the e-mail from "Linda Molina," and that she was in class at the time the message was sent. OCR was unable to corroborate this claim.

The Title IX regulations prohibit recipients from retaliating against individuals who engage in activities protected by Title IX and the regulations. In determining whether unlawful retaliation occurred, OCR looks at whether the complainant engaged in an activity protected under the laws and regulations OCR enforces, whether he or she was subsequently subjected to an adverse action, and whether there is evidence of a connection between the protected activity and the adverse action. If there is evidence of a connection, the College must provide a legitimate reason for the adverse action. OCR will then determine whether the stated reason is a pretext for retaliation.

The complainant alleged that she engaged in protected activities when she complained to College administrators that the professor had subjected her to sexual harassment, and when she subsequently filed a formal discrimination grievance. It is clear that the

¹ Title IX requires that colleges respond promptly and equitably to complaints of discrimination based on sex. In addition, when a school learns of possible sexual harassment, it must respond promptly and appropriately to determine what occurred, to prevent any further harassment, and to address the effects of the harassment on the student. Because the College's alleged failure to respond to the complainant's grievance occurred more than 180 days before she filed her OCR complaint, OCR did not consider this allegation to be timely, and therefore did not determine whether the College's response to the grievance complied with the requirements of Title IX.

complainant discussed the professor's behavior, and her feelings towards him, with administrators during the spring semester. However, the evidence does not establish that she mentioned sexual harassment during these discussions or that she described behavior that should reasonably have been considered discrimination or harassment.

The complainant did raise allegations of discrimination and sexual harassment on August 1, 2001, when she filed her grievance. OCR determined that the complainant's spring 2002 suspension and expulsion occurred after she filed her grievance, and was imposed in part by a dean who had reviewed her grievance and discussed her concerns with her. OCR therefore found a sufficient preliminary connection between the complainant's protected activity and her subsequent suspension and expulsion to require the College to provide a legitimate explanation for its actions.

The College contends that the complainant's expulsion was based on her failure to comply with the conditions of her readmission to the College during the spring 2002 semester. College administrators concluded that the complainant used College computers to create and send an e-mail message to the professor, using a false name, after she was instructed to have no contact with him in any form. College suspension/expulsion documents indicate that the act of creating a false e-mail, and of using it to contact the professor notwithstanding clear instructions not to do so, was sufficient to justify immediate expulsion.

After reviewing all of the evidence, OCR concluded that the College's explanation for the expulsion was not a pretext for retaliation. The College provided evidence indicating that the complainant was suspended in 2001 for visiting and sending e-mails to the professor after she was explicitly instructed not to do so. It decided to expel her after obtaining evidence that she was again sending e-mails to the same professor. OCR did not make a determination as to whether the complainant actually sent the e-mails from "Linda Molina" or as to whether her expulsion was justified by the evidence. However, it did not find evidence that College administrators chose to expel her because of her August 2001 grievance, rather for the reasons they provided. In reaching this conclusion, OCR noted that College administrators provided credible evidence that, by the time they received her grievance, they had already concluded that her contacts with the professor were inappropriate. Under all of these circumstances, OCR did not find that the complainant was suspended or expelled in retaliation for her protected activities.

Issue 2: Whether the complainant was expelled from the College because of her national origin.

The complainant alleged that the decision to expel her from the College was based on her Hispanic national origin. In support of this allegation, she alleged that, at a meeting convened to inform her of her expulsion, a dean had called her a "stupid Hispanic woman." She also alleged, generally, that the College treats Hispanic and African

American students badly. Because she provided no specific facts in support of the latter allegation, OCR did not investigate it.

OCR concluded that under the circumstances of this case, the dean's alleged remarks, even if true, without more, would not establish that the complainant was expelled because of her national origin. As noted above, OCR found that the College had a nondiscriminatory reason for expelling the complainant; there is no indication that any of the other individuals involved in the expulsion decision were influenced by the complainant's national origin. OCR therefore did not find a violation of Title VI in connection with this allegation.

Issue 3: Whether the College and the professor sought a temporary restraining order against the complainant in retaliation for her complaint with OCR.

- The College was notified that the complainant had filed a complaint with OCR by letter dated November 4, 2002.
- On January 31, 2003, the College filed a Petition for Injunction and Application for Temporary Restraining Order, seeking a court order to prohibit the complainant from approaching the professor's home or workplace. In support of the need for this order, the College cited several events occurring between June and mid-November 2002.
- On June 12, 2003, after hearing testimony from the complainant and the professor, a California State court judge issued a restraining order prohibiting the complainant from contacting, threatening, or harassing the professor. The court's decision was based on a finding that the professor's claim that he had been harassed was more credible than the complainant's claim that the College filed the petition in response to her pursuit of charges of sexual harassment against the professor.

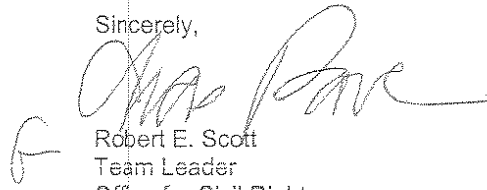
In general, OCR must respect the rights of recipients and their employees to pursue meritorious claims in court. In this case, a state court judge heard testimony from the complainant and the professor and concluded that the injunction petition was meritorious, and that it was not merely filed in retaliation for the complainant's sexual harassment charges. OCR will not ordinarily re-investigate determinations made in the course of litigation. We therefore find no violation of Title IX in connection with this allegation.

Based on the above, OCR finds the College in compliance with Title IX and Title VI with respect to the issues investigated in this complaint. OCR is closing the complaint as of the date of this letter and is notifying the complainant in a concurring letter.

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If you have any questions about the complaint, please call Loretta Eason, Equal Opportunity Specialist at (415) 556-4242, or contact me at (415) 556-4279.

Sincerely,



Robert E. Scott
Team Leader
Office for Civil Rights

Cc:
Edward B. Reitkopp
Atkinson, Andelson, Loya, Ruud & Romo