



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

REGION IX
634 Federal Building
69 United Nations Plaza, Room 239
San Francisco, California 94102

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June 27, 2009

Dr. Chai L. Tsang
President
San Jose City College
2100 Moorpark Avenue
San Jose, California 95128

(In reply, please refer to #09-03-2069.)

Dear President Tsang:

The U.S. Department of Education, Office for Civil Rights, has completed its investigation of the above-referenced complaint against the San Jose City College. The complainant alleged that the College discriminated against her (Student)¹ on the basis of sex. Specifically, the Student alleged that the College radio station manager, a student at the college, sought from her sexual favors, which she refused at her home. Shortly thereafter, she was terminated from her position as business manager of the radio station. Consequently, she filed a complaint of sexual harassment with the College and the College failed to properly investigate her complaint of discrimination.

OCR investigated the complaint under the authority of Title IX of the Education Amendments of 1972 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. The College receives funds from the Department and is subject to Title IX and the regulations.

The specific issue investigated by OCR was whether the College responded appropriately after it received notice that a student had been discriminated against on the basis of sex by another student.

OCR gathered evidence through interviews with the Student and College staff. OCR also reviewed documents and records submitted by the College and the Student.

OCR concluded that the evidence established that the College violated Title IX of the regulations with respect to its failure in providing the Student with a grievance process that provides for a "prompt and equitable" resolution of complaints. The facts gathered during the investigation, the applicable legal standards, and the reasons for our determination are summarized below.

¹ OCR notified the College of the identity of the complainant (Student) when the investigation began. We are withholding her name from this letter to protect her privacy.

Under Title IX, the implementing regulation found at 34 C.F.R. 106.31 (a) and (b), and the Revised Sexual Harassment Guidelines issued by OCR in January 2001, a recipient is responsible for providing students with a nondiscriminatory education environment. Sexual harassment of a student can result in the denial or limitation, on the basis of sex, of the student's ability to participate in or receive benefits, services, or opportunities in the school's program.

Harassing conduct may take many forms, including verbal acts and name-calling, as well as nonverbal behavior, such as graphic and written statements, or conduct that is physically threatening, harmful or humiliating. When harassing conduct is sufficiently severe, persistent, or pervasive that it creates a hostile environment, it can violate a student's right under the Title IX.

When a college learns of possible sexual harassment, it must take reasonable steps to eliminate it. It must respond promptly and adequately to determine what occurred, including a timely, thorough and objective investigation. The responsive action taken by a recipient must be reasonably calculated to prevent recurrence and ensure that individuals are not restricted in their participation or benefits as a result of a hostile environment created by students or staff.

Section 106.8(b) further requires a recipient to adopt grievance procedures providing for the prompt and equitable resolution of student and employee complaints alleging any actions prohibited by Title IX.

Our Investigation showed the following:

The complaint involved two students, one of whom had authority over the other: A male student who was the volunteer manager of the student radio station and a female student who was the business manager. Based on its own interviews and the documents collected by OCR, the weight of the evidence is that during a conversation about body piercing that took place in the complainant's home, the male student asked the female student to reveal to him a personal part of her body. The female student refused to reveal herself and shortly thereafter, was subject to adverse actions involving the college setting that were at least partially within the control of the male student. These actions included termination from her position at the College radio station.

The female student subsequently filed a complaint of discrimination, sexual harassment, with the College. Pursuant to Title IX regulation, OCR sought to determine whether the College's handling of the complaint was prompt and equitable, including, if discrimination were found, whether the College had taken the steps necessary to ensure that the discrimination would not recur.

OCR concludes that the process was not prompt. Though the College quickly commenced an investigation, the complainant did not receive notice of the outcome of the investigation until March of 2003, 12 months after she had filed her complaint and after the College was on notice of her subsequent complaint with OCR. The College complaint procedures state that the investigation should be completed within 90 days of receipt of the complaint. Moreover, the College was still investigating the complainant in January 2003, when OCR had become involved in the process. The College's existing timelines are consistent with Title IX requirements. The noncompliance reflected a failure to adhere to these guidelines.

Consequently OCR obtained from the College documentation that, among other things, additional training will be provided to the appropriate College staff regarding their responsibilities under Title IX to provide a prompt and equitable investigation.

OCR concludes that the process was equitable based on a totality of the reasons. The investigation by the College was thorough. Relevant evidence and relevant available witnesses were interviewed. The conclusion of the College that the events that occurred in the complainant's home, taken in isolation, did not constitute sexual harassment was reasonable and consistent with law because the actions of the male student, in the given context, were not sufficiently persistent, pervasive or severe to constitute harassment. However, when these events are coupled with the subsequent adverse actions concerning the radio station, a viable claim of sexual harassment has been presented. Consequently to conduct an equitable investigation the College had a duty to determine if these actions were the result of the complainant's refusal to submit to the male student's requests. The College fulfilled this duty. It concluded that a connection could not be established. Though OCR might have reached a different conclusion, the College conclusion is reasonable in light of the fact that the male manager had expressed to the faculty supervisor repeated objections to the complainant's performance prior to the events that occurred at the complainant's home. Further, the actual authority to remove the complainant was exercised by the faculty advisor. Neither OCR nor the College found any evidence that the faculty advisor was motivated by discriminatory or retaliatory purposes.

Finally, although the College did not find harassment, the faculty advisor did reinstate the student, the male student ceased working at the station and no longer had authority over the complainant, and the College issued a written reprimand for unprofessional conduct to the male student.

Based on the above, including steps taken by the College to ensure future adherence to the College's published complaint procedures for responding to complaints of discrimination, OCR finds the College in compliance with Title IX and the regulations with respect to the issues investigated in this complaint. OCR is closing the complaint as of the date of this letter. Thank you for the cooperation of your staff in the expeditious resolution of this complaint.

If you have any questions about this letter, please call Vicki Rioran at (415) 556-4233.

Sincerely,



Robert E. Scott
Team Leader
Office for Civil Rights