



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

OCT 29 2004

Dr. Horace Mitchell
President
California State University, Bakersfield
9001 Stockdale Highway
Bakersfield, California 93311-1099

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(In reply, please refer to Case No. 09-04-2067.)

Dear President Mitchell:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed by (b)(7)(C) against California State University, Bakersfield. The complainant alleged that the University discriminated against her based on sex. The issue OCR investigated was whether the College adequately and effectively responded to the complainant's complaints that she had been sexually harassed, and whether the College failed to provide a prompt and equitable grievance procedure to resolve her complaints.

OCR investigated the complaint under the authority of Title IX of the Education Amendments of 1972 and its implementing regulation. Title IX prohibits discrimination on the basis of sex in programs and activities operated by recipients of Federal financial assistance. The University receives funds from the Department and is subject to Title IX and the regulation.

OCR reviewed information provided by the complainant and the University. OCR also interviewed the complainant and University staff, including the Associate Vice-President for Academic Affairs and Dean of Undergraduate Studies, the Provost and Vice-President for Academic Affairs and other University staff. OCR concluded that the University responded adequately to the complainant's individual complaints. However, as discussed further below, OCR found that the University did not have in place a procedure to ensure the prompt and equitable resolution of complaints of sex discrimination, as required by the Title IX regulation. The University has acknowledged the deficiencies and has provided OCR with the enclosed Resolution Agreement to remedy these concerns. The facts gathered during the investigation, the applicable legal standards, and the reasons for our determination are summarized below.

34 C.F.R. § 106.31 (a) states that no person shall, on the basis of sex, be excluded

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from participation in, be denied the benefits of, or be subjected to discrimination in any of the recipient's education programs or activities. Sexual harassment (unwelcome verbal or physical conduct of a sexual nature) that is severe, pervasive or persistent can result in the denial or limitation, on the basis of sex, of a student's ability to participate in or receive benefits, services, or opportunities from the school's program.

Sexual harassment can take several forms. One form, often called hostile environment harassment, can be carried out by one student against another. When a college or university has notice of peer sexual harassment, it must take immediate and appropriate steps to determine what occurred, stop the harassment and prevent it from happening again. A university is not responsible for the actions of a harassing student, but rather for its own discrimination in failing to respond adequately. OCR will evaluate the appropriateness of a university's responsive action by looking at whether the response was prompt, thorough and effective.

In evaluating a university's response, OCR will also examine the university's nondiscrimination policies, complaint procedures and other applicable policies, and whether they were followed. Universities are required by 34 C.F.R. §106.9 to adopt and publish a policy against sex discrimination. In addition, 34 C.F.R. §106.8(b) requires universities to adopt and publish grievance procedures providing for the prompt and equitable resolution of complaints alleging sex discrimination. Further, 34 C.F.R. §106.8(a) provides that a recipient must designate an employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX, including investigation of any complaint alleging noncompliance with Title IX. The recipient must notify all its students and employees of the name, office address and telephone number of the appointed employee or employees.

In determining whether the University's grievance procedures are prompt and equitable, OCR considers whether the procedures include elements such as notice to students and employees of the procedure, including where complaints may be filed; application of the procedure to complaints alleging harassment carried out by employees, other students, or third parties; adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence; designated and reasonably prompt timeframes for the major stages of the complaint process; notice to the parties of the outcome of the complaint; and an assurance that the University will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate.

Our investigation found the following:

- The University's policy prohibiting sexual harassment is located in its Class Schedule and Catalog, which are distributed to students at least annually and made available on the University's website.
- The Class Schedule, Catalog and on-line information direct students to the Counseling Center and Office of Personnel Services for issues related to sexual harassment. The Catalog further states that students can be directed to "the campus officer(s) assigned the administrative responsibility of reviewing such matters . . ." However, the University publications provide no notice regarding the availability of a grievance procedure through which complaints of sexual harassment may be addressed. Further, there is no information in these publications regarding the identity and contact information for the Title IX Coordinator or, if different, the individual with whom complaints of sexual harassment may be filed. Further,
- The Provost stated to OCR that he is the Title IX Coordinator and that the Student Disciplinary Manual contains the procedure used to investigate complaints of sexual harassment.
- According to the Provost students can file a complaint of sexual harassment with individual departments or offices. The complaint makes its way to the Provost, who is responsible for managing the investigation of a sexual harassment complaint, if it is not resolved at a lower level. Complaints may also be filed directly with the Provost's office. The Provost generally delegates investigation of complaints of sexual harassment involving students to the Dean of Undergraduate Studies and Interim Associate Vice President for Academic Affairs, who is supervised by the Provost.
- All of the deans at the University have received training in conducting investigations, particularly in the area of sexual harassment.
- When interviewed, the Dean stated that the University did not have a grievance procedure specific to sexual harassment. He stated that he uses a workbook entitled "Conducting Campus Investigations" to investigate the complaints. According to him, the workbook is consistent with the Student Disciplinary Manual with respect to how investigations are conducted. Guidelines for gathering evidence are set out in the Student Disciplinary Manual, such as for obtaining witness statements and relevant documentation. Upon completion of an investigation, the Dean provides written findings and recommendations to the Provost, who then determines if a disciplinary hearing would be appropriate.
- The complainant was the ASI Director of Statewide Affairs during the 2003-04 school year. ASI is the body governing student affairs at the University. As part of her duties, the complainant attended meetings at other CSU campuses

regarding organizational affairs within the CSU system. She was also the Programming Representative for the University's Antelope Valley satellite campus, where she was a student.

- On January 16, 2004, the complainant filed a sexual harassment complaint via email with the Assistant Vice President for Student Life. She also filed an identical complaint on the same day with the Director of Human Resources. She alleged that two named male ASI Board members (Student 1 and Student 2) subjected her to verbal and physical harassment by making crude remarks about her and her sexual activity and by touching her inappropriately; she cited five separate incidents that took place between August 2003 and February 2004.
- On January 20 the complainant was notified via e-mail that her complaint had been forwarded to the Dean for investigation. On January 27, the complainant met with the Dean to discuss her complaint. According to the Dean, she reiterated what was stated in her complaint.
- During the remainder of January and the early part of February 2004 the Dean interviewed the following witnesses about the five alleged incidents identified in the complaint: the complainant, Student 1 and Student 2, the ASI President, the ASI Vice President for Programming (a witness identified by the complainant), the ASI Vice President for External Affairs (a witness identified by complainant), the ASI Office Manager (a witness identified by Student 1), and a student at Antelope Valley, also the complainant's friend (a witness identified by the complainant). The Dean also reviewed relevant documentation provided by witnesses.
- In a memorandum dated February 23, 2004, the Dean presented his findings to the Provost. The Dean determined that there was insufficient evidence to corroborate three of the alleged incidents of sexual harassment. In regard to the other two incidents, the Dean determined that remarks of a sexual nature were made, but the comments were not a severe, persistent or pervasive nature to rise to the level of constituting sexual harassment.¹
- The Dean indicated to OCR that his determination took into account questions he had about the complainant's motives for filing her complaint against Student 1 and Student 2. During his investigation, the Dean was also aware that the University was conducting a financial audit of the complainant and the ASI

¹ The complainant stated to OCR that she included in her complaint to the Dean two allegations concerning Student 2 that were not included in the investigative report: one concerning a comment made about the complainant's anatomy and one alleging that the ASI computer was being used to look up pornography. OCR determined that neither allegation was included in her written complaint to the University.

President's expenses related to travel in the fall of 2003. The audit occurred after Student 2, in charge of ASI finances, rejected payment of a travel voucher submitted by the complainant and the ASI President, due to questions about whether the complainant and the ASI President actually attended conferences which the University had paid them to attend. As a result of the audit, the complainant and the ASI President were required to reimburse the University. The Dean stated to OCR that he believed that the complainant's sexual harassment complaint was linked to Student 2's refusal to sign her voucher, and Student 1's support of Student 2's decision. He noted that the complainant filed her complaint of harassment soon after she was notified of the investigation into her use of ASI funds.

- While the Dean concluded that there was not a pattern of incidents that constituted a hostile educational environment for the complainant, as a result of the substantiated incidents involving inappropriate comments that were sexual in nature, he recommended that, if ASI officers were not currently required to complete sexual harassment training, then all future ASI officers should be required to complete sexual harassment training and receive formal certification of completion. The University informed OCR that ASI officers completed sexual harassment training in the fall of 2004.
- The Provost concurred with the Dean's findings and determined that a hearing against the accused students was not warranted.
- On March 4, 2004, the Provost and Vice President for Academic Affairs informed the complainant in a letter that the University had completed its investigation of her complaint and determined that there was insufficient corroboration of her allegations to proceed further. The Provost invited the complainant to submit any additional information she may have to his attention regarding her complaint otherwise the investigation of her complaint was closed. The Provost has had no further contact with the complainant.

Analysis and Findings

Based on the evidence summarized above, OCR concluded that the University responded appropriately to the complainant's sexual harassment complaint. The Dean conducted an impartial investigation, which included interviewing the complainant, the accused and other relevant witnesses most of whose names were provided by the complainant. He then documented his findings and rationale for his conclusions, based on appropriate standards, in a report to the Provost, who concurred with his determination. The University also responded to the complaint in a prompt manner. The complaint was filed on January 16, 2004. The complainant was notified of the outcome on March 4, approximately 50 days later. The complainant was also provided with written notice of the outcome of her

complaint and given the opportunity to discuss the findings with and provide additional information to the Dean and Provost. OCR determined that, with respect to the complainant's situation, the University complied with its obligation under 34 C.F.R. §106.31 to respond promptly and appropriately to notice of sexual harassment.

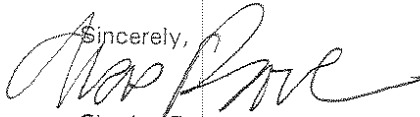
OCR further noted that, while the complainant's complaint was handled in an appropriate manner, the University does not have an identified procedure for the resolution of complaints of sex discrimination including sexual harassment, as required by 34 C.F.R. § 106 (8)(b). The University's publications are not clear in terms of how or with whom to file a complaint of sexual harassment. In practice, it is the Dean who is responsible for responding to complaints of sexual harassment involving students. However, publications direct students, regardless of whether an employee is involved, to the Personnel Office and Counseling Center. There is no written procedure and different administrators have different understandings about what sources to use as the basis for the investigation. Use of a student discipline code, for example, is frequently not an appropriate method of meeting §106B(b) requirements. Discipline codes generally focus on the accused student without provision for the participation of the complainant or provision for notice and remedies for the complainant. Further, the identity and contact information for the Title IX coordinator is not published. For these reasons OCR concluded that the University was not complying with the Title IX regulation.

On October 20, 2004, OCR representatives discussed these deficiencies with University officials and as a result of these discussions, the University entered into a Resolution Agreement with OCR designed to bring it in compliance with the implementing regulations of Title IX. On October 29, 2004, OCR received the enclosed Resolution Agreement signed by the University President and dated October 26, 2004, and concludes that when fully implemented, the Resolution Agreement resolves the compliance concerns raised in this complaint.

This concludes OCR's consideration of this complaint. We are closing the complaint as of the date of this letter. The complainant is being notified of this closure concurrently.

If you have any questions about this letter, please call Lee Robbins, Investigator, at (415) 556-4248.

Sincerely,



Charles R. Love
Program Manager

Enclosure

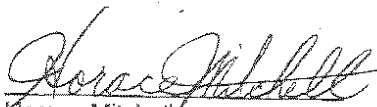
California State University, Bakersfield
09-04-2067

Resolution Agreement

In order to resolve the complaint referenced above, filed with the U.S. Department of Education, Office for Civil Rights (OCR), the California State University, Bakersfield (University) agrees to take the following actions:

1. The University will revise its policy prohibiting sexual harassment to include:
 - (a) The title, office location, and phone number of the University's Title IX Coordinator, responsible for overseeing the University's response to sex discrimination, including sexual harassment.
 - (b) A statement that the University has a procedure it will follow in response to both informal and formal complaints of sexual harassment.
 - (c) Information on how to obtain a copy of this procedure as well as how and with whom to file a complaint.
 - (d) Notice that retaliation against any person who has filed a complaint of sex discrimination and/or participated in the complaint process is prohibited.
2. The University will adopt and implement a procedure, which provides for the prompt and equitable resolution of complaints by students and employees alleging discrimination on the basis of sex, including sexual harassment. The University procedure, at a minimum, will include:
 - (a) A statement that the procedure may be used for complaints of sex discrimination alleged to have occurred in any University program or activity;
 - (b) A statement that the procedure can also be used if the complainant believes that she or he has been retaliated against for having filed or participated in a prior sex discrimination complaint at the University;
 - (c) Identification of the person(s) responsible for accepting complaints;
 - (d) Provisions for a prompt, thorough and impartial investigation and/or hearing process;
 - (e) Reasonable time frames for each major stage of the complaint process; and

- (f) Written notice to the complainant of results of the investigation, including the determination of whether or not sexual harassment occurred, and the resolution of the complaint.
3. A draft of the policy and procedure will be submitted to OCR within 60 days from the date this plan is signed. The procedure will be adopted in final form by the University and forwarded to OCR within 30 days after OCR approves the draft.
 4. The University's policy prohibiting sexual harassment and notice of the availability of the sex discrimination complaint procedure, information about where copies can be obtained, and a summary of the procedure, will be posted on the University website within 10 days after it is finalized. The same information will be included in the next reprinting of the general catalog, class schedule and all student, staff and faculty handbooks. Confirmation of the revisions to the publications will be sent to OCR within 30 days after publication.
 5. The University will provide written notification to all administrators, department chairs, and other academic and administrative unit heads on the terms and implementation of the sex discrimination complaint procedure within 30 days from the date the procedure is finalized. Copies of the notification will be provided to OCR at the time the notification is issued.


Horace Mitchell
President
California State University, Bakersfield

10/26/04
Date