



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

September 4, 1998

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

09-97-2144
Summary

Ms. Linda Salter  
President  
Skyline College  
3300 College Drive  
San Bruno, California 94066

(In reply, please refer to Docket Number 09-97-2144.)

Dear President Salter:

On October 24, 1997, the U.S. Department of Education (Department), Office for Civil Rights (OCR), notified you that it had received a complaint from Ms. Alison Rivera (complainant) filed against Skyline College (the College) alleging discrimination on the basis of sex. The complainant alleges that, while a student at the College, she was subjected to sexual harassment by a professor (the Professor). Specifically, the complainant identifies a class incident and remarks in the Professor's class which she alleges were offensive and had the effect of unreasonably interfering with her education by creating a sexually hostile and offensive environment. She also alleges she was subjected to retaliation because of her complaints to College administrators about the Professor.

OCR is responsible for enforcing the provisions of Title IX of the Education Amendments of 1972 and the Department implementing regulations, found at 34 Code of Federal Regulations (C.F.R.) Part 106, which prohibit recipients of Federal financial assistance through the Department from discriminating on the basis of sex against persons, such as students, participating in their programs and activities. The College receives Federal funds through the Department and is subject to this regulation.

Section 106.71 incorporates the anti-retaliation provision set out at 34 C.F.R. § 100.7 in the Department regulation implementing Title VI of the Civil Rights Act of 1964. These regulations, when read together, prohibit the College from retaliating against any individual for the purpose of interfering with any right or privilege secured by Title IX. The District receives Department funds and is subject to OCR jurisdiction.

OCR investigated how the College processed the complaint and whether the complainant was retaliated against by the Professor because she filed a complaint. OCR did not investigate whether or not the complainant was sexually harassed or whether a sexually hostile environment existed. OCR concluded that the College failed to implement its own sexual harassment procedures to investigate the complaint of sexual harassment when notified of it in April 1997 by the complainant. OCR also concluded that the College

unnecessarily disclosed the identity of the complainant to the alleged harasser. The College has agreed to a Voluntary Resolution Plan (VRP) which, when implemented, will bring the District into compliance in regard to the issues in this case. OCR did not find that the complainant was retaliated against because she filed her complaint.

In the investigation of this complaint, OCR interviewed the complainant and representatives of the College and reviewed documents submitted by both. OCR also interviewed several students who were enrolled in the class with the complainant. This case resolution letter contains a summary of the facts gathered during the investigation, the applicable legal standards, and the VRP which the College agreed to implement in order to address its Title IX responsibilities arising from this complaint.

### **Legal Standards**

The specific section of the regulations applicable to this investigation is found in the implementing regulation for Title IX at 34 C.F.R. § 106.31, which provides that no person shall, on the basis of sex, be excluded from participation in, be denied the benefits or, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity.

Under Title IX, an institution will be held responsible for harassment by its employees or agents acting within the scope of their duties. The institution will be considered to have responded adequately to knowledge of harassment if it has conducted a thorough and objective investigation and, if harassment is found, it has taken immediate action to fully remedy the harm that occurred and to prevent sexual harassment from occurring in the future.

Title IX also incorporates by reference 34 C.F.R. § 100.7(2)(e), which prohibits intimidatory or retaliatory acts against any individual who asserts rights under Title IX.

### **Factual Summary**

The complainant alleged that while she was enrolled in a particular College class during the spring of 1997, the class Professor used certain offensive language, thereby creating a sexually harassing environment for her. Specifically, the complainant alleged that in addition to using profanities and obscene language, the Professor told one female student who had been verbally challenging him during a class discussion that she had beautiful breasts, thereby deliberately embarrassing her into silence. The complainant further alleged the Professor retaliated against her by lowering her final grade in the class because she complained to College administrators about him.

At the beginning of this investigation the College indicated that it did not process this complaint through its sexual harassment procedures because the complainant refused to file a sexual harassment complaint. The College stated that the complaint involved several issues and that the complainant's concern was mostly about her final grade in the class. The complainant confirmed that she refused to file a sexual harassment complaint against

the Professor with the College even after being advised of her right to do so by the College staff.

OCR determined that, despite her refusal to file a sexual harassment complaint, the complainant notified several College staff about a sexually hostile environment which she felt existed in her class. She first expressed these concerns and many other issues verbally to her counselor in April of 1997. In response to the counselor's concern for clarification of the issues, on May 2, 1997, the complainant wrote down all of her concerns which included allegations that the Professor used obscene language and talked about a female student's breast during a class in order to humiliate and silence her.

Within the next three weeks the counselor notified the Dean in charge of the counselor's department who notified the Professor's Dean who then shared with the Professor the issues raised by the complainant including the allegations of the sexually hostile environment. On May 22, 1997, with the consent of the complainant, the Professor's Dean held a meeting with both the complainant and the Professor to discuss the student's grade on a test. At that meeting the complainant learned that the Professor had been allowed to read her written concerns which she had put in writing for her counselor.

Beyond passing the complainant's concerns up to the next level of authority, not one College staff person implemented the College's sexual harassment procedures to ensure that the allegations were promptly and equitably investigated and resolved if necessary. In its written data response to OCR and in staff interviews, the College explained that the reason no investigation was done under the College sexual harassment procedures was due to the fact the complainant refused to file a formal complaint. Further, the College asserted that the complainant's real concern was her grade in the class and not the issue of sexual harassment.

During negotiations for the resolution of this complaint, the College President indicated that, while OCR was investigating this complaint, she read the complainant's written concerns and talked with the Professor regarding his comments in the class. The President indicated to OCR that, based on that discussion, she determined that sexual harassment did not occur. According to the College's written procedures the, College's Vice President of Student Services is responsible for investigating sexual harassment complaints. The President did not interview the complainant or any other person during this investigation nor did she notify the complainant of her findings.

#### Procedural Issues

OCR reviewed the College's policies and procedures regarding sexual harassment in the educational setting. Section 106.8(a) requires that the institution designate at least one employee to coordinate its responsibilities under Title IX, including the investigation of any complaint of discrimination on the basis of gender, and to notify all students and employees of the name, office address and telephone number of the designated employee(s). Under section 106.8(b), the institution is required to adopt and publish a grievance procedure providing for the prompt and equitable resolution of student and

employee complaints alleging noncompliance with Title IX and its implementing regulations.

Section 106.9 requires the institution to publish a notice of non-discrimination on the basis of gender in publications made available to students and employees or applicants for enrollment and include the following information: 1) that the requirement not to discriminate extends to both employment and admission, and 2) that inquiries concerning the application of Title IX to the recipient may be referred to the employee designated under section 106.8 or to OCR.

At the time of this investigation, the College's written policy prohibiting sexual harassment was contained in the San Mateo County Community College District's (District) Policy on Sexual Harassment #2.25 and Policy on Sexual Harassment Involving Students #7.67, available to all faculty and staff in the Faculty Handbook which is located in the division office and the College library. OCR found that the policies were clearly stated but failed to refer the reader to written procedures for implementation.

During negotiations with OCR, the District Board of Trustees passed Board Report No. 98-5-1B which combines and revises the above two policies into one sexual harassment policy identified as No. 2.25 applicable to both students and employees. OCR reviewed those revisions and determined that they correctly include a reference to written procedures for implementation. However, OCR determined that the new policies failed to state that the colleges will take steps to stop sexual harassment, if it is found, and prevent its recurrence. Additionally, the revised policy failed to insure that records relevant to a sexual harassment investigation will be kept for a substantial period of time, even where no evidence of sexual harassment was found. Maintenance of these records is crucial in monitoring whether a pattern or practice of sexual harassment is occurring on campuses. In order to resolve these policy omissions, the College agreed to the terms of the enclosed VRP.

OCR next reviewed the College's notification to students of its sexual harassment policy in its Skyline College Catalog 1996-1998 and its Skyline College Spring 1998 Schedule. Both notifications met section 106.8(a) requirements. They included a policy statement on sexual harassment and identified the College Title IX coordinator by title, address and telephone number.

The College's procedures for students' filing sexual harassment complaints are contained in the Sexual Harassment Complaint Procedures for Employees and Students and in the 1997-1998 Skyline Student Handbook. The College has formal and optional informal complaint procedures, both of which include procedural steps, time frames for each step toward resolution of a complaint investigation and information regarding appeal rights. OCR noted that the Student Handbook states that where no sexual harassment is found all written records pertaining to the allegation will be destroyed. In OCR's experience the destruction of all written records of sexual harassment complaints prevents determining whether a pattern or practice of sexual harassment has occurred during any particular year or years. After OCR noted this concern, the College agreed to maintain these records as stated in the VRP.

Title IX requires a recipient to investigate a discrimination complaint whether it is written or verbally presented to determine whether sexual harassment occurred. If such a finding is made, the recipient is required to promptly and equitably stop the harassment and prevent its recurrence. The complainant's refusal to file a complaint did not insulate the College from its Title IX responsibility. Whether the complainant's allegations were reflective of her primary concern or only a secondary concern is irrelevant to the responsibility that the College has to investigate any allegation of discrimination based on sex.

OCR determined that the College did not meet its Title IX responsibilities because it failed to investigate this sexual harassment complaint. Given this fact, the College agreed to reinvestigate the complaint as stated in the enclosed VRP.

#### **Retaliation**

The complainant also alleges that, after she complained to the College about the Professor, he retaliated against her by lowering her final grade in his class from an "A" to a "B" grade. The complainant asserts that she had a 3.7 grade point average (GPA) in his class and that anything over a 3.5 GPA should result in an "A" grade. The complainant also asserted that the Professor gave her a "C" grade in class participation in order to justify his giving her a final "B" grade.

OCR analyzes claims of retaliation by examining whether: 1) the complainant was involved in an activity protected under Title VI; 2) the complainant was thereafter subjected to adverse action(s) by the recipient; and 3) there was evidence of a sufficient connection between the protected activity and the adverse action that gave rise to an inference of retaliation. If these conditions are met, a prima facie case of retaliation is established. Next, OCR examines whether the recipient was able to offer a legitimate nonretaliatory explanation for the adverse action, and whether this explanation was a pretext for retaliation.

OCR determined that the complainant was involved in a protected activity when she alleged she was sexually harassed in class by the Professor. To determine whether the complainant was subjected to adverse action when the professor gave her a "B" grade, OCR reviewed her grades and scores prior to the complainant filing her complaint with the College.

The complainant's GPA for the class was 3.1 and she earned a final grade of "B". OCR reviewed the complainant's tests and grades for the course which were: Quiz grade - A, History and Culture - A, Midterm - B+, DYAD - B, Class Participation - C, Final 1 - B+, Final 2 - A. OCR computed, that even if the complainant were upgraded in class participation from a "C" to an "A", her class GPA would be 3.4 and not the 3.7 GPA which she claimed nor the 3.5 GPA necessary for an "A" grade. OCR finds that the evidence does not support the allegation that the complainant earned a higher grade than she received. OCR found that the complainant suffered no adverse with respect to her final grade and consequently, OCR finds no retaliation.

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On August 24, 1998, the College signed the enclosed VRP to resolve the concerns raised during this investigation. OCR will monitor the College's adherence to this plan. Timely implementation of its terms will resolve the Title IX issues in this complaint. This concludes OCR's investigation and determination in this case. OCR is closing this case as of the date of this letter and is informing the complainant of these findings by concurrent letter.

This letter is not intended, nor should it be construed, to cover compliance by the College with Title IX and its implementing regulations as to any issue or individual not specifically addressed in this letter.

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.

OCR wishes to thank the College for its cooperation during this investigation. If you have any questions about this letter, you may contact Ms. Amirkhas at (415) 437-7798.

Sincerely,

  
Stella B. Klugman  
Team Leader

Enclosure

SKYLINE COLLEGE

Docket Number 09-97-2144  
Voluntary Resolution Plan

Skyline College (College) agrees to implement the following action to resolve the issues in this complaint and to ensure compliance with its responsibilities under Title IX of the Education Amendments of 1972 and the implementing regulation.

1. The College agrees to prepare an addendum to the San Mateo County Community College District's Sexual Harassment Complaint Procedures for Employees and Students. The addendum will include two statements: that when the College finds sexual harassment has occurred it will take steps to prevent the sexual harassment from recurring, and that records relevant to the investigation of sexual harassment complaints will be kept for five years.

By Oct 30, 1998, the College will provide OCR with a copy of the addendum.

2. The College agrees to delete the sentence on page 39 of the Skyline Student Handbook of 1997-1998 which reads: "If the parties agree that there has been no sexual harassment, all documents of the allegation will be destroyed." The College agrees to insert in place of the above deletion a statement indicating that records relevant to the investigation will be kept for five years.

By Oct 30, 1998, the College will provide OCR with documentation of the printing and distribution date of this revised Handbook.

3. The College agrees to notify its counselors and deans of the requirement to implement the sexual harassment procedures when notified of a sexual harassment complaint whether or not a complainant agrees to file a written complaint. The College also agrees that it has an obligation to protect from disclosure to the extent possible, the identity of those students who do not wish to file a written complaint.

a. By the end of this semester, the College will notify its staff of these requirements.

b. By Oct 30, 1998, the College will notify OCR of the date and process of this notification to staff.

4. The College agrees to train its Title IX office and those persons conducting Title IX complaint investigations in conducting prompt and equitable resolution of sexual harassment complaints.

By Oct 30, 1998, the College will provide OCR with documentation of the date of the training, the names of the participants, the name and credentials of the

trainer.

5. The College agrees to investigate Ms. Rivera's allegations of sexual harassment in accordance with the College's Sexual Harassment Complaint Procedures for Employees and Students (as revised per this agreement). The College will notify her in writing on what factual basis, whether or not the College investigation found that sexual harassment occurred.

By OCT 30, 1998, the College will provide OCR with information describing its investigative procedures and findings, and a copy of its written notification of its findings to the complainant.



8/24/98

(Dr. Linda Graef Salter, Skyline College President, Date)