



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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Mr. Rosen	
Mr. Sullivan	
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Tele. Room	
Miss Holmes	
Miss Gandy	

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

June 17, 1998

Dr. Kathleen Hodge  
Chancellor  
South Orange County Community College District  
28000 Marguerite parkway  
Mission Viejo, California 92692-3635

(In reply, please refer to Docket Number 09-98-2015.)

Dear Dr. Hodge:

On December 18, 1997, the U.S. Department of Education (Department), San Francisco Office for Civil Rights (OCR) received a complaint concerning the South Orange County Community College District (College District). The complaint alleged that the District discriminated against students on the basis of sex. Specifically, the complaint alleged that College District officials have knowledge of employee to student sexual harassment and have failed to take steps to stop harassment from occurring and failed to provide a prompt and equitable grievance process for resolving complaints of harassment. The complaint further alleged that members of the campus community are not provided with adequate notice of nondiscrimination policies on the basis of sex and of how and where to file a complaint of sex discrimination.

OCR has the responsibility for enforcing Title IX, 20 U.S.C. §1681 *et seq.*, and the Department implementing regulations, found at 34 Code of Federal Regulations, (C.F.R.), Part 106. These provisions prohibit discrimination on the basis of sex in educational programs operated by recipients of Federal financial assistance through the Department. Since the College District receives such assistance OCR has jurisdiction to investigate this complaint.

This letter represents a summary of the facts gathered during the investigation, the applicable legal standards, and the resolutions reached with the District regarding the allegations raised by the complainant in this case.

On January 28, 1998, OCR notified the College District that OCR had accepted the above allegations for investigation and requested the District to supply copies of its policies and procedures for addressing sex discrimination and sexual harassment. The District provided the requested documentation. OCR also obtained further information from the complainants in support of their allegations.

Legal Standard:

The implementing regulations for Title IX provide, at 34 C.F.R. section 106.31(a), that no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity. Under section 106.31(b), discriminatory treatment may include: different treatment in determining whether a person satisfies any requirement for the provision of an aid, benefit, or service (section 106.31 (b)(1)); providing different aid, benefits, or services or providing them in a different manner (section 106.31 (b)(2)); denying an aid, benefit, or service; (section 106.31 (b)(3)); subjecting any person to separate or different rules of behavior, sanctions, or other treatment (section 106.31 (b)(4)); and otherwise limiting any person in the enjoyment of any right, privilege, advantage, or opportunity (section 106.31 (b)(7)).

When individuals who are participating in a program or activity operated or sponsored by an educational institution are subjected to sexual harassment, they are receiving treatment that is different from others. A common working definition of sexual harassment in the education setting is: unwelcome sexual advances, requests for sexual favors, or other sex-based verbal or physical conduct where (1) submission to such conduct is explicitly or implicitly made a term or condition of the individual's education; or (2) such conduct has the purpose or effect of unreasonably interfering with the individual's education creating an intimidating, hostile, or offensive environment.

An educational institution may be found in noncompliance with Title IX and regulations as a result of such harassment if the harassment is sufficiently severe or pervasive to create a hostile or offensive educational environment. If those responsible for harassment are employees or agents of the institution, acting within the scope of their employment or agency, the institution itself will also be considered responsible for the harassment. If the harassment is carried out by non-agent students, the institution may nevertheless be found in noncompliance with Title IX if it failed to respond adequately to actual or constructive notice of the harassment. The institution will be considered to have responded adequately to knowledge of harassment if it conducted a thorough and objective investigation and took immediate action to fully remedy the harm that occurred and to prevent sexual harassment from occurring in the future.

Recipient institutions must also meet certain other specific legal obligations concerning internal grievance procedures and notification of a non-discrimination policy under 34 C.F.R. sections 106.8 and 106.9. Section 106.8(a) requires that the institution designate at least one employee to coordinate its responsibilities under Title IX, including investigation of any complaint of discrimination on the basis of gender, and notify all students 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 complaints alleging noncompliance with Title IX or 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 or applicants for enrollment which includes at least the following information: 1) that the requirement not to discriminate extends not only to programs and services but also to both employment and admission, and 2) that inquiries concerning the application of Title IX to the recipient may be referred to the designated employee under Section 106.8.

Secondary institutions are not required, under Title IX, to maintain separate grievance procedures for sexual harassment. However, if the institution elects to process sexual harassment complaints through a separate grievance procedure, that procedure must meet the regulatory requirements for notice and must also be a "prompt and equitable" procedure.

#### Resolution of the Complaint:

On March 26, 1998, OCR contacted the College District to discuss specific revisions to the Nondiscrimination Notices, the draft sexual harassment policy and the complaint procedure for filing complaints against employees and students. OCR and the College District discussed items to be included in a voluntary resolution plan. On March 31, 1998, the College District's legal counsel wrote to OCR concerning the allegations in the complaint and the scope of the resolution plan. In a letter dated April 8, 1998, OCR clarified the allegations in the complaint and OCR's approach to resolution. The letter indicated that OCR received sufficient information from the complainants to illustrate that: students do not have adequate notice of how and where to file a complaint of sexual harassment; the written information provided to members of the campus community does not clearly state that the College District has a Title IX Coordinator as required by federal regulation; and evidence available to OCR indicated that neither students nor College staff are able to identify the Title IX Coordinator.

OCR expressed concern that the lack of an adequate system of notification about how and where to file may contribute to the fact that there are no complaints being filed. Additionally, the lack of an identifiable person responsible for Title IX compliance (i.e. the Title IX Coordinator) may have created a barrier to the filing of complaints.

OCR also notified the College District's legal counsel that after a review of the information provided by the College District, OCR determined that College District nondiscrimination notices, sexual harassment policy and discrimination grievance procedure did not meet Title IX standards. OCR provided its suggested revisions of

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these policies and procedures to the College District on April 8, 1998 as an attachment to the above referenced letter to the District's legal counsel. On May 28, 1998 OCR received the revisions of these policies and procedures for OCR review.

After further discussions with the College legal counsel, OCR received a copy of the voluntary resolution plan (Plan) which was signed by the District on May 29, 1998. The Plan sets forth the College District's commitments to resolve the issues raised in this complaint as described below.

The College District agreed to provide a revised nondiscrimination notice, a sexual harassment policy and discrimination complaint procedure for filing complaints against employees and students. The College District also agreed to disseminate these documents as specified in the resolution plan. The College District also agreed to appoint and make known the availability of the Title IX Coordinator.

The College District agreed to keep records of its inquiries, informal and formal complaints of sexual harassment and to provide OCR with a monitoring report by August 15, 1999, for OCR's review and technical assistance on complaint processing to the College District.

The College District also agreed to provide training to administrators who are responsible for the processing of discrimination complaints and for implementing the sexual harassment policy. Other campus faculty and staff and students will receive training in sexual harassment laws and grievance processing in a systematic manner over the next year.

Based on the commitment to resolve the issues in this case, (A copy is attached and incorporated by reference into this letter), OCR is closing the investigation of this case at this time. Upon receipt of documentation from the College District that these commitments have been successfully fulfilled, OCR will issue a final closure letter in this case. Failure to comply with the terms of the voluntary resolution plan in a timely fashion will result in OCR reopening this case.

OCR notes that the College District has already completed its revision of the notice, policy and procedures for sexual harassment complaints and OCR has provided its comments on the revisions as noted above. OCR was also informed of the appointment of two individuals who will serve as Title IX Coordinators, one male and one female.

**Recommendations:**

OCR recommends the following clarifications to the recently amended District Formal Procedures for filing discrimination complaints.

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1. When listing civil rights statutes (e.g., Legal References in Board Policy 4000.5), please include Title VI of the Civil Rights Act of 1964 (which prohibits discrimination on the basis of race, color, or national origin).
2. Under Item 1 of the document entitled District Formal Procedures, delete the sentence referring to complaints filed with OCR (which is confusing out of context). Instead, in a footnote placed after the first appearance of the phrase "within one year", state the following:

Please note that you will not preserve your right to subsequently file a complaint with the U.S. Department of Education, Office for Civil Rights (OCR), unless you file with the District within 180 days of the alleged discriminatory act.

Incorporation of the above recommendations completes the college district's commitments for OCR review under the Plan. Please send OCR a copy of the final version adopted by the College District.

Under the Freedom of Information Act, it may be necessary to release this document and related records upon request. In the event that 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 District's legal counsel, Mr. Covert for his assistance in facilitating a resolution of this complaint on the College District's behalf. If you have any questions concerning this matter, please contact Regina Sneed at (415) 437-7813).

Sincerely,



Adriana Cárdenas  
Team Leader  
Compliance Division II

Enclosure: Copy of Voluntary Resolution Plan

cc: Spencer E. Covert, Parker, Covert and Chidester

## PLAN FOR VOLUNTARY RESOLUTION

Office for Civil Rights  
Docket Number 09-98-2035

In order to resolve the allegations raised in the above-referenced complaint filed with the U. S. Department of Education, Office for Civil Rights (OCR), under Title IX of the Educational Amendments of 1972, South Orange County Community College District (College District) agrees that it will take the following steps:

### I. Procedures and Policies

The College District agrees to revise its Title IX notices of non-discrimination, its Title IX sexual harassment policy, and its Title IX discrimination grievance procedure for complaints alleging discrimination on the basis of sex or alleging discrimination on all protected bases under Title IX.

The College District agrees to appoint a District Title IX Coordinator by May 29, 1998, and to provide notice to students of the Title IX Coordinator's name or title, and specific location, including address and telephone number.

The College District will submit to OCR for review and comment, no later than May 30, 1998, a final revised draft copy of the non-discrimination notice, the sexual harassment policy and the discrimination complaint procedure.

The College District will provide notice to the campus community via a memorandum to employees and a notice distributed to students of the revised policies and procedures. The College District will make copies of these items available to OCR by July 1, 1998.

Notice of the policies and procedures will appear in the College District's catalogues, schedule of classes and student handbook for 1999-2000, unless there are revised editions that will be published for the spring 1999 semester.

### II. Records

As required by Title IX, the College District will keep records of all reports of and complaints alleging sexual harassment which are filed under the discrimination complaint procedure.

The College District will provide OCR with a monitoring report based on the required record keeping by August 15, 1999. The report will use a code in place of the name of the person making a sexual harassment report or inquiry or filing a complaint on that basis. The monitoring report will describe the sexual harassment report and/or complaint, indicate how such was addressed, describe how the determination was made, and set forth any actions taken in response or other resolution of the matter.

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The College District agrees that OCR will review the way the College District addressed the reports and complaints, and that OCR will make suggestions and recommendations where necessary to ensure that the standard of a prompt and equitable resolution under the Federal regulations governing Title IX is being met.

**III. Training**

The College District will provide training on sexual harassment and on the investigation of sex discrimination and sexual harassment complaints to those administrative employees who are responsible for such investigations. The College District will also provide training to employees about sex discrimination, sexual harassment and the discrimination complaint process for filing a complaint. Students enrolling in the College District will be provided, as part of their orientation, information about the College District's non-discrimination notice, sexual harassment policy, and the process for filing complaints of discrimination.

The training for individuals who investigate discrimination and sexual harassment complaints will be completed within 60 days of OCR's approval of the College District's policies and procedures.

**IV. Reporting Requirements**

In I. above, the College District will report the following actions and provide the following items to OCR by the dates specified below:

- A. Appointment of Title IX Coordinator(s) by May 29, 1998.
- B. The District has already provided to OCR drafts of the notices of non-discrimination, sexual harassment policy, and grievance procedure for complaints alleging discrimination for review.
- C. Once the items in B. are reviewed and commented on by OCR, furnish copies of the finally approved notices, procedures and policies to OCR by July 31, 1998.
- D. Copies of the revised texts of the notices, sexual harassment policy and grievance procedure for complaints of discrimination for insertion into student handbooks, course schedules, and college catalogues will be provided for OCR review and approval by May 30, 1998, with finally approved versions provided to OCR by July 31, 1998.

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In II. above, the College District will provide a monitoring report to OCR by August 15, 1999, of its records of sexual harassment complaints.

In III. above, training for employees who investigate sexual harassment complaints will take place no later than 30 days after OCR's approval of the policies and procedures in I. above.

Training for employees will occur during the 1998-99 academic year.

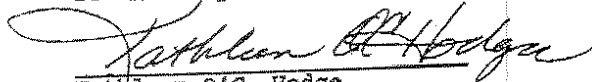
The terms of this agreement may be modified by agreement between OCR and the College District relative to times and due dates for submission of material from the College District for just cause. Failure to timely complete these commitments may be cause for OCR to reopen its investigation of the issues raised in the complaint.

**V. Other**

This agreement resolves all issues between OCR and the College District arising out of Docket No. 09-98-2035. However, this agreement does not constitute an admission by the College District, its officers, employees and agents, of any allegations or of any violations of law. This agreement shall not be admissible in any proceeding as evidence of any violation of law by the College District, its officers, employees or agents. The term of this agreement shall be from the date is executed by both parties until September 1, 1999.

**VI. Approval**

Approved on behalf of:  
South Orange County Community



Kathleen O'C. Hodge  
Acting Chancellor

May 29, 1998  
(Date)

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