



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

UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

January 12, 1999

Dr. A. J. Harrison  
Chancellor  
Peralta Community College District  
333 Eighth Street  
Oakland, California 94606

Attention: Dr. Wise Allen, Vice-Chancellor of Education & President, Merritt College  
Mr. Larry Hardy, Director of Affirmative Action

(In reply, please refer to Docket Number 09-98-2067.)

Dear Dr. Harrison:

On February 13, 1998, the U.S. Department of Education (Department), San Francisco Office for Civil Rights (OCR), received a complaint filed by Ms. Margaret (Maggie) L. Owens (hereinafter referred to as C) against the Peralta Community College District (District) and Merritt College (hereinafter MC). The complaint alleged that the District discriminated against C on the basis of gender, in violation of Title IX of the Education Amendments of 1972. The complaint specifically alleged that during the Spring 1997 semester at MC, C, a student, was subjected by her instructor to a sexually hostile environment in her Racism in America class, and that she complained of this matter to District administrators on May 6, 1997. C alleged in her complaint that she recontacted the District five times from August 5, 1997, through December 31, 1997, by telephone and by letter to inquire about the results of her complaint, but District administrators did not provide her with an explanation of the outcome.

OCR has the responsibility for enforcing the provisions of Title IX and the implementing regulations of the Department, promulgated thereunder at 34 C.F.R. Part 106, which prohibit recipients of Federal financial assistance through the Department from discriminating against program beneficiaries (students), and in certain circumstances, employees, and applicants for employment, on the basis of sex. The District receives Federal funds through the Department and is a public education system; OCR therefore has jurisdiction to investigate this complaint pursuant to Title IX and the District is required to comply with the above law and regulation.

OCR has recognized sexual harassment as a form of sex discrimination under Title IX and its implementing regulations. In addition to Title IX and the implementing regulation, OCR has also relied on other documents such as the Policy Interpretation

entitled "Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students or Third Parties (the "Guidance") issued March 13, 1997, 62 Federal Register 12034 et seq. (1997). In the Guidance, sexual harassment in the education setting is defined in relevant part to include unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct where such conduct has the purpose or effect of unreasonably interfering with the individual's education or creating an intimidating, hostile, or offensive environment. Further, a hostile environment can occur even if the harassment is not targeted specifically at the individual complainant.

The specific applicable standard enforced by OCR for grievance procedures under Title IX is found at 34 C.F.R. § 106.8 which requires recipients to adopt and publish grievance procedures providing for a "prompt and equitable" resolution of complaints and grievances filed under an institution's policies against discrimination on the basis of sex and gender. In the Guidance, OCR defined "prompt and equitable" grievance procedures as including a thorough and reliable investigation that includes an opportunity to present witnesses, timely notice to the complainant of the outcome of the investigation and timely processing of a complainant's grievance.

When reviewing complaints in which a recipient has conducted an investigation of the underlying allegations, OCR typically seeks to determine whether the resolution of the complaint meets OCR's regulatory standards. Included among OCR's considerations in such cases are whether all allegations were investigated; whether appropriate legal standards were applied; and whether the remedies secured meet OCR's standards.

The OCR investigation revealed that C had filed her internal complaint of a sexually hostile environment by a letter dated May 2, 1997 to the District. In her complaint, C alleged that the instructor had presented a number of films which she felt were unnecessarily sexually explicit; that he had made repeated gratuitous off-color jokes of a sexual nature that were not related to the subject matter of the course; and that he had worn a T-shirt with sexual depictions on it. C's letter of complaint was received on May 6, 1997. An investigation was undertaken by the District and witnesses, including C, the instructor, another student and two administrators, were interviewed. C was permitted to take the final exam of the course under the supervision of a proctor to alleviate her discomfort caused by being in the same classroom with the instructor. On July 24, 1997, the report of the internal investigation was written. Although the report was completed in July 1997, C alleged that she made repeated requests for information about the results of the District's investigation, but had not received any information about the results of this investigation as of December 1997 despite repeated telephone inquiries.

OCR found that the instructor referenced in C's complaint had elected to retire from employment with the District after the semester in which the alleged harassment had taken place, that no determination of his culpability in the matter was made, and that

no disciplinary action had been taken against him. While the District's investigation properly addressed the First Amendment issues related to an instructor's right to present films in the context of academic freedom, the investigation did not address in any meaningful manner whether the repeated off-color jokes and wearing the clothing at issue constituted violations of the District's sexual harassment policy. Further, the summary of the investigation included comments noting that the instructor's jokes were not targeted at C. OCR also found no evidence that the District offered C an opportunity to present witnesses in support of her complaint. In addition, OCR found no evidence that any written notification was provided to C of the outcome of the investigation of her internal complaint.

A review of the District internal complaint investigation and administrative procedures revealed some areas that lacked specificity and clarity. For example, the District's procedures did not specify any timelines for completing an investigation; the means by which the District would keep a complainant informed about the progress of its investigation; the opportunity for a complainant to present witnesses; or the means by which the District would notify a complainant about the results of a District investigation.

Besides the concerns OCR had with the District procedures, OCR had a number of concerns related to the District's investigation of C's complaint. First, OCR was concerned about an apparent standard the District used in concluding that the instructor had not directed his off-color jokes at C and the implicit conclusion that she was therefore not subject to a hostile environment. Second, there was no apparent attempt to distinguish between the academic freedom concerns related to the subject matter of the course and behavior that appeared to have no legitimate relationship to the course. Third, OCR was also concerned about the District's apparent failure to provide any meaningful information to C in a timely manner about the outcome of the complaint. Finally, OCR had some concerns about the thoroughness of the investigation as there was no evidence that C was informed that she could present witnesses or that the District made an effort to seek out statements from a sufficient number of students.

After extensive discussions, OCR and the District reached an agreement that resolves the issues of this complaint. Under the terms of this agreement, a copy of which is enclosed and which is incorporated into this letter by reference, the District is revising its policies and procedures with respect to harassment of students based on gender, and regarding the processing, investigation, and resolution of complaints of such harassment. The District is also committed to offer counseling services to the complainant in this case.

It is OCR policy, upon finding that the issues of a complaint have been resolved, to discontinue investigation of the complaint and to close the complaint without making formal findings in the case. OCR has determined that the agreement attached to this

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letter, if timely and appropriately implemented, will resolve the outstanding issues of this complaint. OCR is, therefore, closing this complaint as of the date of this letter and is so notifying the complainant by concurrent letter. If, in the future, a question arises as to the completeness of the District implementation of the attached agreement, OCR may re-open the complaint and continue the investigation.

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.

Your cooperation in resolving this matter is appreciated. If you have any questions about this letter, please contact Chris Witt, the investigator assigned to the case, at (415) 437-7791, or me, at (415) 437-7676.

Sincerely,



David R. Rolandelli  
Team Leader

Enclosures

cc via facsimile: Larry Hardy