



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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November 9, 1999

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

Reverend Paul L. Locatelli, S.J.
President
Santa Clara University
Santa Clara, California 95053

(In reply, please refer to Docket Number 09-99-2088.)

Dear President Locatelli:

This is to inform you that the U.S. Department of Education (Department), San Francisco Office for Civil Rights (OCR), has completed its investigation of the complaint referenced above, alleging that that Santa Clara University (University), discriminated against a student on the basis of sex. Specifically, the complainant, Ms. Teresa Darias, alleged that the University failed to investigate and respond to her complaint of sexual harassment in a prompt and equitable manner.

OCR enforces Title IX of the Education Amendments of 1972 (Title IX) and its implementing regulation. Title IX prohibits discrimination on the basis of sex in education 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.

On April 21, 1999, OCR notified the University that it had accepted the complaint allegations for investigation and resolution. OCR also informed the University that under OCR's investigation procedures, at any point in an investigation, OCR may close the case if the recipient advises OCR that it is willing to resolve all issues raised by the complainant and provides OCR with a written commitment specifying actions that OCR determines will appropriately resolve each issue.

The University indicated that it was interested in pursuing voluntary resolution of the complaint. On October 25, 1999, the University signed a Voluntary Resolution Plan to resolve deficiencies noted by OCR during the course of its investigation. The remainder of this letter is a summary of facts gathered during the investigation, the applicable legal standards, and OCR's determinations regarding the allegation raised in this case.

Legal Standard

The regulation implementing Title IX at 34 Code of Federal Regulations (CFR), section 106.31(a) prohibits the University from denying students the benefit of, or subjecting them to discrimination on the basis of sex in any academic, extracurricular, or other program or activity operated by the University. Under Department policy, sexual harassment is a form of sex discrimination under Title IX and its implementing regulations.

Under 34 C.F.R. §106.8(b) a recipient is required to adopt and publish a complaint procedure providing for a prompt and equitable resolution of complaints alleging discrimination on the basis of sex.

Summary of facts

As part of its investigation, OCR requested and received documentation from the University pertaining to the complaint allegations. The University responded that an investigation of the complaint allegations had been made by the University's Title IX Officer/Affirmative Action Officer (AAO) and copies of the AAO's investigative findings were provided to OCR.

Based upon the information provided by the University, a University employee allegedly sexually harassed the complainant sometime during either the fall 1996 quarter or Winter 1997 quarter. Although the complainant was unable to recall the exact date of the alleged sexual harassment, the AAO determined that on February 3, 1997, the complainant reported the incident to another University employee approximately two weeks after the alleged sexual harassment occurred. According to the AAO's statement to OCR, the complainant independently decided not to pursue a sexual harassment complaint. However, according to the AAO's interview notes with the complainant, the University employee asked if she could report the incident. The complainant informed the University employee that she did want to file a complaint but never followed through on it. OCR noted that the University did not act or attempt to resolve the complainant's complaint at that time.

Approximately one year after the alleged incident occurred, the complainant sought counseling through the University's Counseling Center. During one of her counseling sessions, the complainant recalled the alleged incident to her counselor. The counselor encouraged the complainant to report it to the University's Associate Provost.

After speaking with the complainant, the Associate Provost contacted the University's AAO on March 9, 1998. The complainant was then referred to the AAO on March 16, 1998 and made a verbal report of the alleged sexual harassment incident. According to the University's grievance procedures, in place at the time that the complainant verbally reported the incident to the AAO, if a complainant wished to

pursue the formal resolution procedure, a complaint had to be made in writing. The complaint procedures also stated that an investigation would be conducted within 45 days. According to the AAO, the complainant delayed in submitting a written complaint approximately 47 days after making a verbal complaint.

On April 30, 1998, the complainant submitted her written complaint to the AAO Officer. Upon receipt of the written complaint, the respondent was notified of the complaint filed against him and placed on administrative leave.

In accordance with the University's grievance procedures, the AAO conducted an investigation of the complaint allegations. According to the AAO, the actual investigation of the complaint was also delayed for various reasons. Upon conclusion of the investigation, the AAO then submitted her evidentiary findings to a three-person panel, which was scheduled to meet on July 21, 1998, to decide if the allegations were sustained. However, the meeting was cancelled due to scheduling conflicts.

On July 30, 1998, the respondent resigned from the University prior to the panel meeting being rescheduled. At that point, according to the AAO, the case was considered closed as the University determined that it was unlikely that the respondent could use his employment status to engage in improper conduct with University students. OCR noted that although the University considered the complaint closed at this point, there was no documentation to support that this was ever communicated to the complainant.

According to the AAO, at the time that the complainant filed the complaint with her office, the complainant was not enrolled as a student in the University and was not planning to return to the University in the fall of 1998. However, the complainant continued to insist that University administrators render a decision as soon as possible. The AAO decided to review the complaint with the Provost before responding to the complainant. Due to the 1998 Christmas season and the Provost's schedule, the AAO had to wait to discuss the case with the Provost until January 1999. In the interim, the complainant was advised by the AAO that she could take any courses that she wished during the Winter 1999 quarter at no charge. The complainant agreed to register for two courses, with waived tuition.

In early 1999, the AAO met with the Provost and reviewed her investigative findings. Based upon the information provided to him by the AAO, the Provost concluded that there was no issue of liability to the University and meeting the complainant's compensation demands was inappropriate.

On February 19, 1999, the AAO notified the complainant that the alleged inappropriate acts did not rise to the level of sexual harassment. OCR noted that upon learning of the allegation in 1998, the University took immediate and corrective action.

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However, over 180 days had elapsed from the date of the alleged offense to the date the University acted to resolve the complaint.

Upon notification of the University's decision regarding her complaint, the complainant informed the AAO that she wanted a reconsideration of her complaint. However, on March 4, 1999, the AAO notified the complainant that there was no appeal procedure for students seeking compensation for alleged actions for which University assumes no liability.

On October 25, 1999, prior to any determination by OCR, the University submitted a Voluntary Resolution Plan (VRP) which, upon implementation, OCR determined is sufficient for compliance as to the issues raised in this complaint. Under the terms of the VRP, the University has agreed to implement its revised grievance policies and procedures used for investigating student complaints of discrimination, including sexual harassment, to resolve the complainant's complaint allegations. Additionally, the University agreed to publicize its revised complaint procedures in the University's student publications.

Based on the University's written commitment that the VRP will be implemented, OCR is closing this case as of the date of this letter. OCR will monitor the University's compliance with the assurances contained in the VRP. If the University fails to perform the assurances, OCR may reopen the case and resume its investigation. A copy of the VRP is enclosed.

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.

If you have any questions, please contact Ms. Cynthia Avila, the investigator assigned to this complaint, at (415) 556-4232, or me at (415) 556-4275.

Sincerely,



H. Stephen Deering
Program Manager

Enclosure

Voluntary Resolution Plan
Santa Clara University
Docket Number 09-99-2088

To resolve the allegations in the complaint referenced above, filed with the Office for Civil Rights (OCR) under Title IX of the Education Amendments of 1972, the University agrees to take the following actions:

1. The University will publish its revised sexual harassment and discrimination grievance procedures in the Student Catalog and Student Handbook and will post them on its web page.
2. By September 29, 2000, the University will provide OCR a copy of its Student Catalog and Student Handbook containing the revised grievance procedures.
3. By November 19, 1999, the Assistant Vice President for Human Resources will review the complainant's sexual harassment complaint, the investigative file and reports prepared by Affirmative Action Officer, and render a decision under the revised complaint procedures. A copy of the Assistant Vice President for Human Resources' findings and decision will be provided to both the Student and OCR on or before November 30, 1999.
4. Should the complainant appeal the decision, the University will provide OCR a copy of the appeal and the University's response within 15 days of the conclusion of the appeal process.


Reverend Paul L. Locatelli, S.J.
President

10/25/99
Date