



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
REGION I
JOHN W. McCORMACK POST OFFICE AND COURTHOUSE, ROOM 701
POST OFFICE SQUARE
BOSTON, MASSACHUSETTS 02109-4557

DEC -8 2004

Mr. Roger H. Brown
President
Berklee College of Music
1140 Boylston Street
Boston, Massachusetts 02115-3693

Re: Compliance Review No. 01-02-6001
Berklee College of Music

Dear President Brown:

This letter is to inform you that the Office for Civil Rights (OCR) has concluded its Title IX sexual harassment compliance review of the Berklee College of Music (College) and to thank you and your staff, especially Mr. Lawrence Bethune, for the time, assistance, and spirit of collaboration extended to OCR during this review.

This review was not conducted as a result of any OCR complaint against the College, but rather as a result of the College being selected as a review site on OCR's proactive docket. The review was conducted pursuant to Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 *et. seq.*, and its implementing regulations found at 34 C.F.R. Part 106 (Title IX), which prohibit discrimination on the basis of sex in any program or activity that receives Federal financial assistance from the U.S. Department of Education. As a recipient of Federal financial assistance, the College is subject to the requirements of Title IX and its implementing regulations.

OCR reviewed relevant policies and procedures of the College relating to sexual harassment, including the roles of the Title IX Coordinator and other staff involved in prevention and response activities. OCR also looked at the relationship and activities of other programs such as campus security, health services and residential life in dealing with sexual harassment.

Throughout the 2002-2004 years, OCR staff met with College counsel and administrators in order to share OCR's conclusions and to discuss various steps that the College could take in order to resolve the Title IX compliance concerns identified during this review. Subsequently, the College provided OCR with a Letter of Commitment (Letter - copy enclosed), which describes actions that the College has already taken, and those steps it plans to take that, once completed, will resolve the Title IX compliance concerns identified below.

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The following is a summary of OCR's findings and conclusions with regard to the issues reviewed.

Issue #1 – Whether the College designated a Title IX Coordinator and notified students and employees of the name, office address, and telephone number of the Title IX Coordinator.

Legal Standard

The Title IX regulation requires that the College "designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under [Title IX], including the investigation of any complaint communicated to [the College] alleging noncompliance with [Title IX] or alleging any actions that would be prohibited by [Title IX.]" It also states that "[the College] shall notify all its students and employees of the name, office address, and telephone number of the employee or employees appointed pursuant to this paragraph." 34 C.F.R. Section 106.8(a).

Findings

OCR found at the beginning of this review that the Title IX Coordinator was not identified by name, office address, or telephone number in any College publication, such as the College's sexual harassment policy, Bulletin or other handbooks. Almost no one affiliated with the College knew whether the College had a Coordinator or, if they did, who the person was. For the purposes of this review, the College appointed the Vice President of Student Affairs/Dean of Students as the OCR liaison and Title IX Coordinator. OCR found that both the Vice President and Assistant Vice President of Student Affairs had, in the past, informally resolved Title IX grievances that students had brought to their attention. While OCR noted that the act of informal resolution qualifies as one of the duties of a Title IX Coordinator, OCR found that neither individual was designated to carry out the other duties normally associated with a Title IX Coordinator, such as central coordination and reporting. Moreover, the greater College community, including students, staff and faculty, were unaware and uninformed regarding the duties that these individuals were carrying out under Title IX. This lack of notice to the College community was underscored by the absence of effective communication between the various offices/persons charged with handling Title IX grievances.

Conclusion: Issue #1

OCR concluded that prior to this review, the College had not designated a Title IX Coordinator and had not provided appropriate notice to its students and employees of the name and contact information for this individual, as required by the Title IX regulation. However, prior to conclusion of this review, in response to OCR's concerns, the College designated a Title IX Coordinator, notified the College community accordingly through written and online publication, and provided the Title IX Coordinator with appropriate training. Therefore, OCR has concluded that these actions taken by the College to date satisfy the requirements set forth under Title IX with regard to designation of a Coordinator and providing notice. Additionally, in its Letter to

OCR, the College has agreed to report to OCR on the broadening of the scope of its publications containing this information and on the continued training of key individuals.

Issue #2 – Whether the College adopted, published, and implemented adequate Title IX grievance procedures.

Legal Standard

The Title IX regulation requires the College to “adopt and publish grievance procedures providing for the prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited by [Title IX].” 34 C.F.R. Section 106.8(b). Implicit in the requirement that recipients adopt appropriate procedures is a requirement that they be properly implemented once they are adopted. Some of the problems OCR identified with the procedures and their implementation are described below.

Findings

OCR has identified a number of elements in evaluating whether a school’s grievance procedures provide for prompt and equitable resolution of complaints of sexual harassment, including whether the procedures provide for:

- Notice to students and employees of the procedure, including where complaints may be filed;
- Application of the procedure to complaints alleging sexual or sex-based 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 school will take steps to prevent recurrence of any harassment found to have occurred and to correct its discriminatory effects on the complainant and others, if appropriate.

Notice

OCR found that there was inadequate notice to students and employees of the grievance procedures, including where complaints may be filed. The students OCR interviewed indicated that they were not aware of the College’s grievance and sexual harassment procedures and that they did not know where they were supposed to report complaints. The procedures themselves were confusing, since the College had five different sets of complaint procedures, administered by four different offices, applicable to sexual harassment complaints, depending on the status of the alleged victim and perpetrator. While there were a number of similarities among the various policies and procedures, such as establishment of a Harassment Committee to hear formally filed complaints, there were notable differences in where complainants were asked to report their grievances and how the College would proceed. The procedures themselves did not give the

names and telephone numbers of the persons to whom victims should report, and, as stated above, the College did not publicize the name and telephone number of a Title IX coordinator in charge of complaints.

Application of Policy to Harassment by Employees, Students, and Third Parties

Another concern with the College's grievance procedure process was that its policies and procedures for bargaining unit employees, including faculty, did not address situations where faculty wished to file Title IX grievances against their chairs or other superiors. The policies and procedures referred this type of grievance to the Office of the President for handling under that Office's procedure. OCR requested a copy of these procedures and was not provided with any such document or information. OCR was informed through interviews that, in fact, the Office of the President had not yet developed a policy or procedures for processing sexual harassment complaints filed by faculty against their superiors. As a result of this lack of an effective procedure, OCR found that at least one complaint that had been filed by a faculty member was not addressed promptly by the College and was ultimately pursued with an outside agency.

Adequacy of Investigation

OCR found that the College's grievance procedures, as implemented for faculty, did not consistently lead to the adequate, reliable, and impartial investigation of complaints. A number of faculty interviewed expressed concern, based on their own personal knowledge and experience, at the College's lack of response to sexual harassment issues that had been brought to the attention of their supervisors. Faculty were told to write letters to their alleged harassers and/or otherwise handle it on their own, and neither the supervisor nor anyone else at the College followed up with the faculty member to determine whether and how the matter had been resolved. For both faculty and students, other than one instance where a formal process was followed and documented by the Provost's Office, OCR found that in most instances the College encouraged use of an informal verbal complaint process almost exclusively, and there was very little documentation concerning whether informally raised complaints were satisfactorily resolved.

As a result of the frequent use of this informal verbal process, the College could not provide OCR with documentation of cases in which its grievance procedures had worked successfully to resolve a sexual harassment complaint. For the purposes of this review, the Office of the Dean of Students did provide OCR with an informal log of student complaints compiled from an administrator's working notes, which was helpful to OCR in gaining insight into the College's informal procedures. Nonetheless, for the most part, as evidenced by OCR's onsite interviews and subsequent records review, the College did not maintain records of the sexual harassment complaints it received from faculty and students and how they were resolved.

OCR found that the College had not provided any substantive sexual harassment training for the members of the Harassment Committee, the body of persons charged with investigating, resolving and making findings with regard to formally filed sexual harassment complaints. In order to respond fairly and equitably to allegations of sexual harassment, training and education are needed for the people charged with investigating/resolving complaints. OCR notes that

without such training, members of the College's standing committee could not reasonably be expected to possess the necessary tools to fulfill their obligation.

Timeframes and Notice of Outcomes

None of the policies contained specific timeframes for resolution and a mention of eventual notice to the parties of the outcome of the complaint. Based on information the College provided during this review, mostly drawn from informal logs maintained by certain administrators, OCR found that student-on-student complaints appeared to be resolved informally in a timely manner, with notice to the parties provided in certain cases. With faculty-on-faculty and faculty-on-student complaints, however, in most cases the complete lack of documentation in College records rendered it impossible for OCR to determine whether investigations were concluded in a timely manner or notice provided to the parties of the outcomes.

Prevention of Recurrence/Corrective Action

Overall, a number of faculty informed OCR that due to the College's prior lack of response to their complaints, they concluded that there was no point in coming forward with complaints of harassment, as their concerns would not be addressed. Concern was also voiced among students and faculty regarding reporting incidents because "nothing will be done about it", or worse, they feared retaliation for reporting. One administrator reported that when he/she received a sexual harassment complaint from a student about a faculty member, he/she delayed responding to the complaint until the end of the semester out of concern that the faculty member would retaliate against the student. OCR noted (as referenced on page 81 of the Union Contract) that before the Provost's Office would initiate an investigation of alleged harassment, the Office required faculty, staff, students and administrators (who believed they have been harassed by a faculty member) to submit a signed written complaint. While OCR understands that in certain circumstances, it may be beneficial to have a copy of the complaint in writing, OCR has concerns that requiring the complaint to be written down might result in the College not addressing the discrimination about which it has actual notice, and it may effectively discourage victims from seeking assistance.

As part of this review, OCR requested and reviewed descriptions of any Title IX sexual harassment training the College had provided for students, staff and faculty to date. Of the information provided, OCR found that training specifically targeted to sexual harassment issues was provided for department chairpersons in March 2001. This training was described as a "retreat" for all department chairpersons and staff persons from Academic Affairs. The College also provided OCR with a copy of the PowerPoint presentation used in this training and the minutes, which were helpful in understanding the content. OCR commends the College for taking steps to train this key group of individuals. Overall, OCR perceived from interviews that the response to that training was good, and that more training of this type was needed for others at the College, particularly faculty and staff.

With regard to students, faculty and staff, OCR concluded during the early stages of this review that the College had not provided adequate training in sexual harassment issues for these groups of individuals. While a lack of training in and of itself would not normally present a compliance

concern, OCR found this lack of training particularly troubling in view of the fact that students, staff and faculty were unaware of the identity and function of the College Title IX Coordinator, what the Title IX policies and procedures were, or how to access them. In OCR's view, this combination of lack of awareness, training, documentation, and frequent reliance on informal procedures, put the College and its students, faculty, staff and administrators at risk for unaddressed Title IX sexual harassment concerns.

Conclusion: Issue #2

OCR concluded that prior to this review, the College had not adopted, published, and implemented grievance procedures providing for the prompt and equitable resolution of student and employee sexual harassment complaints, as required by 34 C.F.R. Section 106.8(b). However, prior to conclusion of this review, in response to OCR's concerns, the College revised, published, and implemented grievance procedures, as described in more detail below.

Resolution/Commendations

During meetings with OCR staff to discuss OCR's conclusions, the College agreed to designate a Title IX Coordinator who would oversee coordination and reporting. After designating the Coordinator, the College informed OCR that it had notified the College community of the identity and contact information for this individual. Specifically, the College informed OCR that information on how to contact this individual was published in the student Bulletin and in the newly revised sexual harassment policy brochure that was developed and to be made available to all students during the 2004-05 school year, as discussed in more detail below.

The College revised and published, with OCR input, its existing sexual harassment procedures for students, staff and faculty, and provided training in the new procedures to the College community, including training about the types of behavior that constitute sexual harassment. At the time of this writing, the College has concluded and published the first revision of its policies and procedures, in a brochure entitled "Workplace Discrimination and Sexual Harassment Policy". The information contained in this brochure is also available to students online at the College website. While these revised procedures do not incorporate the faculty portion of the procedures, OCR plans to monitor the development and implementation of the faculty portion during the monitoring phase of this compliance review. (The College informed OCR that the faculty portion is subject to the collective bargaining agreement and will consequently take more time to develop. OCR expects that pursuant to item #2 of the Letter, the College will report to OCR on any future revisions of its Title IX policies and procedures, including the eventual revisions of the faculty portion of the policy.) As a part of the revised procedures, the College has also agreed to establish a uniform, centralized system for documenting sexual harassment complaints and resolutions.

Also proactively, the College retained a professional Title IX consultant/trainer in January 2004 to develop Title IX sexual harassment training plans for students, staff, faculty, and administrators for the remainder of the school year.

During spring 2004, the College conducted training for its supervisors on workplace harassment and sexual harassment involving students and informed OCR that it would continue conducting additional training on a regular basis. College officials informed OCR that the professional Title IX consultant provided training for the initial sessions with supervisors, and that College staff would then be trained internally to conduct future training sessions, and also utilize online training via the Internet. Specifically, College officials informed OCR that they projected providing workplace harassment training for approximately 200 managers and supervisors, 300 staff members, and 471 faculty members. College officials also informed OCR that sexual harassment awareness/training would be provided for all students, including international students, during orientation week and at other awareness events throughout the year.

OCR commends the College administration for having taken these significant proactive steps to designate a Title IX Coordinator, revise its policies and procedures, and develop and provide Title IX training, all prior to the conclusion of this review.

In addition, OCR noted during this review that the Counseling Center plays a vital role in counseling/assisting all students who come to the Center seeking information on a myriad of issues, including harassment. Counselors informed OCR that they counsel students, including international students, in a wide range of issues. In particular, OCR found that the Center has undertaken proactive steps to ensure that international students have resources available to them to help them to acclimate to differences in cultural norms. The Center offers (cultural) adjustment counseling and workshops entitled "Relationships in America" both during the summer session for international students and again during the school year. The workshops are interactive and encourage international students to explore the differences of social interaction in U.S. culture, as opposed to their home culture. The content of the workshops appeared to be very useful, and OCR commends the efforts of the College and the Center in presenting these workshops.

To conclude, the action items in the Letter, once completed, will resolve any remaining Title IX compliance concerns discussed in this letter. With regard to item #5.a. in the Letter, OCR confirmed on September 29, 2004, via email correspondence with the College that, in addition to the identity of the alleged victim in any future complaints, the College will also maintain within the records the identity of the accused individual.

OCR recognizes that the College has made very significant positive strides toward achieving compliance with Title IX during the course of this review and that the Letter reflects the College's intent to continue broadening the impact of those steps already achieved. To this end, as is customary, OCR will monitor the College's implementation of the steps contained in the Letter through December 30, 2005. We ask that the College submit periodic monitoring reports outlining progress made with respect to the terms of the Letter. Monitoring reports will be due by the following dates: December 30, 2004, and June 30 and December 30, 2005.

We would like to thank you and your staff again, especially Mr. Bethune, Ms. Karen Zorn, and Mr. Paul Lyons, Esq., for sharing their time, ideas and perspectives for resolution of the issues identified during this review. If you have questions regarding this letter, you may call Mary-Anne Khouliani, Equal Opportunity Specialist, at (617) 223-4148, Judith Phillips, Civil Rights Attorney, at (617) 223-9691 or me at (617) 223-9667.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas J. Hibino". The signature is written in a cursive style with a large initial "T".

Thomas J. Hibino
Director

Enclosure

cc: Larry Bethune, Vice President for Student Affairs

Paul V. Lyons, Esquire
Foley Hoag, Attorneys at Law