



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

FEB 3 2005

Dr. Elaine Tuttle Hansen
President
Office of the President
Bates College
2 Andrews Road
Lewiston, Maine 04240

Re: Complaint No. 01-04-2051

Dear President Hansen:

I am writing to inform you that the Office for Civil Rights (OCR) has completed its investigation of a complaint, filed against Bates College (College) on August 9, 2004, by (b)(7)(C) Complainant). The Complainant alleged that the College discriminated against her on the basis of sex. Specifically, she alleged that the College failed to afford her a fair and impartial response to her complaint that two male students at the College sexually assaulted her in the early morning of March 6, 2004 after an end-of-season swim team party and that the College failed to protect her from retaliation by the male students for filing the complaint.

In our investigation, we reviewed information and records provided by the College and interviewed the Complainant, College administrators and staff, and others. As a result of our investigation, OCR has found insufficient evidence that the College failed to provide the Complainant a prompt and equitable response to her complaint or failed to protect her from retaliation. The basis for our finding is set forth below.

Legal Standard

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX) and its implementing regulation, which prohibit discrimination on the basis of sex including sexual harassment or sexual assault (See 34 C.F.R. Part 106). The College is subject to Title IX and its implementing regulation because it receives Federal financial assistance from the U.S. Department of Education. Title IX requires a recipient of Federal financial assistance to adopt and publish a policy against sex discrimination and to promptly and equitably respond to complaints alleging discrimination on the basis of sex (See 34 C.F.R. Section 106.8(b)).

OCR investigated whether the College has a grievance process as required by Title IX, and whether the College promptly and equitably responded to the complaint of sexual assault, including protecting the Complainant from retaliatory acts for filing her complaint.

Factual Background and Analysis

OCR reviewed the College's nondiscrimination policies and procedures, which include the prohibition of discrimination based on sex, and its policy on sexual harassment, including sexual assault. OCR also reviewed the College's Code of Student Conduct and Disciplinary Process. These appear in the College's Student Handbook, which is available in published form as well as on the College's website. OCR found that these policies and procedures, on their face, meet the Title IX requirements for a nondiscrimination policy and a grievance process that affords a prompt and equitable response to complaints of discrimination based on sex.

OCR next considered whether the College responded promptly and equitably to the Complainant's report of sexual assault. In making this determination, OCR reviewed the College's records of the Dean of Student's (Dean's) investigation and interviewed the Dean and an Assistant Dean who participated in the investigation. OCR also interviewed the police detective who conducted an investigation on behalf of the Lewiston Police Department, as well as other relevant witnesses in this matter.

In terms of whether the College promptly responded to the complaint, the evidence demonstrated that the College first became aware of it on March 6, 2004, with the Complainant's visit to the campus Health Center. The Dean became aware of it on March 7 from the Lewiston Police Department, with whom the Complainant filed a complaint.

The Dean met with the Complainant on March 7 and offered alternative housing and counseling at the Health Center. She also arranged for the Complainant to receive meals outside the regular dining hall. The Health Center set up a standing weekly counseling appointment, which the Complainant declined to utilize. On March 16, two Deans met with the Complainant to discuss the avenues available to her under the College's processes. The Dean interviewed the Complainant on March 26, and she and the Assistant Dean again briefly met with her on April 9 to obtain a statement and to get her list of witnesses. The Dean did not, however, immediately initiate an investigation of other possible witnesses, including the two accused students, because the Police Department Detective had told her to refrain from proceeding until the Department had completed its process. In her initial conversation with the Detective, however, the Dean asked whether either of the two students was a possible threat to the Complainant or to others in the Bates community and the Detective responded that he did not believe that they represented a threat to the Complainant or to the public at large. On March 22, 2004, the Detective informed the Dean that he had completed his investigation.

Once the Detective advised the College that he had completed his investigation, the Dean proceeded with the College's investigation, including a March 24 email to the Complainant requesting a copy of the statement the Complainant had provided to the Police Department and advising the Complainant that she would be interviewing others. The Dean interviewed the Complainant on March 26, the two male students on March 30, and three other students on March 31 and April 1. In an email to the Complainant of April 1, the Dean asked her to provide the names of her witnesses and requested a meeting with her the following week. The Dean again requested a statement from the Complainant, which she had not yet

provided. The Complainant met with the Deans on April 9, accompanied by her attorney, when she provided a copy of the complaint she had submitted to the police.

The records provided by the College showed that between April 4 and April 30, the Dean interviewed all of the Complainant's witnesses but one. She also interviewed other students who were not recommended by the Complainant, but who were witness to some of the activity that night. The Dean also viewed a brief videoclip of the alleged attack, and a video of the swim party before the alleged incident. She also reviewed photographs of students, including the Complainant, taken at the swim party. The Dean concluded her last interview on May 3 and issued her findings in separate meetings with the Complainant and the two male students on May 18, 2004, upon completion of the investigation.

Based on this information, OCR concludes that the College promptly investigated the Complainant's complaint of sexual assault. While the Dean initially delayed the interviews of other potential witnesses at the request of the Lewiston Police Department, an issue OCR has discussed with the College, the Dean completed a rather extensive investigation and issued written findings in just over ten weeks. This was a sufficiently prompt amount of time given the facts of this case.

In deciding whether the College equitably responded to the Complainant's complaint, OCR considered whether the College's investigation was thorough and impartial. In her complaint, the Complainant made numerous allegations that the College's investigation was neither thorough nor impartial. Each of her concerns is discussed below where relevant.

As mentioned above, the evidence demonstrated that in responding to the complaint, the Dean interviewed the Complainant, the two accused male students, 14 of the complainant's recommended 15 witnesses,¹ and three other witnesses that the Complainant had not recommended but that became relevant during the course of the investigation. She interviewed some of the witnesses on more than one occasion. The Dean also reviewed the videotape of the swim party preceding the incident, as well as photographs of the party and the brief videoclip of the alleged assault. In addition, she maintained contact with the Detective assigned to the case, and sought advice on the effects of alcohol and how quickly alcohol metabolizes in the body. The College also provided the Complainant with a number of opportunities to submit information related to the alleged assault. Based on this information, OCR concluded that the College conducted a thorough investigation of the complaint of sexual assault.

OCR next considered whether the Dean's investigation was impartial. In making this determination, we read the Dean's written decision and her handwritten notes of student interviews. We also questioned the Dean and the Assistant Dean concerning the basis for their conclusions, and considered whether the evidence reasonably supported the Dean's decision. Our specific concerns about impartiality focused on the allegations of the complaint.

¹ The College reported that it attempted to reach one of the Complainant's recommended witnesses on at least two occasions, but that they were unable to successfully interview that student. In reviewing the testimony of all of the witnesses interviewed by the College, and in considering the information this witness allegedly possessed, OCR determined that the failure to interview this witness was not a critical flaw in the College's investigation or in its ultimate decision.

First, the Complainant alleged that the Dean's investigation and decision were biased because she relied most heavily on the testimony of the accused students' witnesses and not on the testimony of the Complainant's witnesses. A review of the notes of witness interviews demonstrated that the Dean interviewed all of the Complainant's witnesses except one, and some witnesses not recommended by the Complainant. In an interview with OCR, the Dean explained that she considered the testimony of the Complainant's witnesses but that she gave greater weight to other testimony that did not support claims the Complainant had made about her level of sobriety or the alleged assault. In questioning the Dean and in reviewing the notes of the interviews, OCR could not conclude that the Dean's reliance on the testimony of these witnesses was unreasonable, or unsupported such that it demonstrated bias on the Dean's part.

The Complainant next alleged that the investigation was biased because the College's attorney "suppressed" the video of the swim party, and that the Dean thus failed to properly consider this video in determining the Complainant's ability to consent. The Dean testified that she watched the video, and that she concluded that the Complainant was not prominently featured in the video and that it did not support the Complainant's contention that she was "unconscious" or so intoxicated that she was unable to consent. In addition to the video, the Dean also relied on testimony from a number of other witnesses who testified about the Complainant's level of sobriety, as well as still photographs taken at the party. Since the Dean watched the video, and since she also relied on other evidence in support of her conclusion, OCR cannot find that the Dean's decision in this regard was unreasonable or biased.

The Complainant also alleged that the Dean's investigation and decision were biased because she failed to consider an Instant Message about the complainant's sobriety sent from one of the accused students to another student right after the incident. OCR asked the Dean about this message and learned that she had questioned one of the accused students about it. The Dean weighed this student's assertion against other testimony she had received on the issue of the Complainant's sobriety and found the student's assertion plausible. OCR did not find sufficient evidence to support your allegation or that the Dean's conclusion in this regard was unreasonable or unsupported by the testimony she had received.

The Complainant further alleged that the Dean's decision was biased because she concluded that the Complainant had not been assaulted, in part, based on the brief videoclip of the incident that showed one of the accused students using force. The Dean explained to OCR that she watched the videoclip and did not reach the same conclusion. While OCR did not view the videoclip, we interviewed the Detective and the Assistant District Attorney who viewed it as part of the criminal investigation, and their conclusions were similar to the Dean's. Based on this information, OCR was unable to find that the Dean's conclusion about the video was unreasonable or biased.

Finally, the Complainant alleged that the Dean's investigation and ultimate decision were biased because the College's disciplinary procedures call for "all cases of major misconduct" to be referred to the Student Conduct Committee (SCC) for a hearing, and the Dean failed to refer the Complainant's case to the SCC. Title IX does not require institutions to provide a "hearing" as the only means of resolving complaints of sex discrimination. While institutions *may* provide a "hearing" as a method of resolving complaints, the regulation's requirements

are satisfied if the institution conducts a prompt, thorough and impartial or fair investigation, during which both sides are afforded the opportunity to present their side of the matter and any other evidence they may have in support of their claims.

Through interviews with staff and a review of numerous other cases of misconduct, OCR learned that the Dean's office conducts an investigation in all cases, both minor and major, before deciding whether to send them forward to the SCC, notwithstanding the language of the Disciplinary Process. The Dean admitted that this sexual misconduct case differed from any other case she had investigated because she had referred all other cases of sexual misconduct to the SCC. She further explained that in this case, unlike every other case she had processed, the greater weight of the evidence suggested that a sexual assault had not occurred. OCR reviewed all of the evidence the Dean relied on in making this determination, and found insufficient evidence to suggest that this was an unreasonable or biased conclusion.

With regard to the Complainant's second allegation, that the College failed to protect her from retaliation by the two male students, the Complainant charged that she had been harassed by one of the male students in the dining hall on one occasion a few weeks after the alleged assault. The Complainant said this student walked back and forth near her table and stared at her. The College acknowledged that the Complainant reported this incident in the April 9, 2004 meeting with the Deans and her attorney, but claimed that she only reported that he stared at her. On April 9, the Dean responded by issuing stay-away orders to the two male students and to the Complainant in accordance with the College's practice. The Dean also testified that when she first advised the male students of the charges and again when she interviewed them on March 30, prior to becoming aware of the dining hall incident, she had verbally advised them to refrain from any contact with the Complainant.

The Complainant informed us that there was one other occasion, a social event shortly before the Dean issued her decision, at which the same student came up behind her and deliberately bumped into her. The Complainant stated that she did not report this incident to the Dean or to any other College official. Thus, the College had no notice of this incident.

Based on this information, OCR concluded that the College properly warned the accused students to refrain from contacting the Complainant or retaliating against her, and then subsequently took sufficient steps to protect her from retaliation or additional harassing conduct once College officials had notice of it.

Conclusion

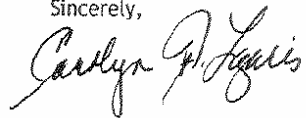
OCR concludes that the College took prompt and equitable action, even while delaying the start of its formal investigation for approximately two weeks, and the College took reasonable steps to protect the Complainant and others. Further, the College conducted its process promptly, issuing the Dean's finding approximately ten weeks after the incident occurred. The information the Dean provided in OCR's interview regarding her collection and weighing of the evidence shows that her finding was reasonable and impartial. During our investigation, OCR advised College representatives that, under Title IX, it cannot defer its obligation to promptly and equitably respond to a complaint, even when told to do so by police.

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Therefore, we are closing this complaint effective the date of this letter and will take no further action regarding it. Thank you for your cooperation and assistance, and that of your staff, in resolving this complaint. We also wish to thank College attorney John Cole for his assistance.

If you have any questions concerning our investigation or the content of this letter, please contact me at (617) 223-9662. You may also contact Nancy Taylor at (617) 223-9690 or by electronic mail at nancy.taylor@ed.gov or Beth Downs at (617) 223-9665 or beth.downs@ed.gov. They are the investigator and attorney, respectively, assigned to this case. You may also contact Team Leader Donna Russell at (617) 223-9701.

Sincerely,



Carolyn F. Lazaris
Program/Administrative Manager

cc: (b)(7)(C)

