



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
ATLANTA OFFICE, SOUTHERN DIVISION
61 FORSYTH STREET, SW
SUITE 19T70
ATLANTA, GEORGIA 30303

JAN 24 2001

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Dear (b)(7)(C)

Re: Complaint #04-00-2127

On May 29, 2000, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received your complaint filed against South College (College). You (Complainant) alleged that the College discriminated against you, an African American female, on the bases of race and sex. Specifically, you alleged that, while attending the West Palm Beach campus of the College, an instructor sexually harassed you. You alleged further that, when you reported the harassment, you were afforded no relief and were subsequently retaliated against by the College. You also alleged that the same instructor made racially discriminatory remarks about African American students.

OCR is responsible for enforcing Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. §§ 2000d *et seq.* and its implementing regulation, 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color or national origin by recipients of Federal financial assistance. The regulation implementing Title VI states, in part, that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

OCR is also responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), as amended, 20 U. S. C. §§ 1681 *et seq.*, and its implementing regulation, 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in programs and activities receiving Federal financial assistance from the Department. The regulation implementing Title IX at 34 C.F.R. §106.8 (a) and (b) states that each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX and shall adopt and publish grievance procedures providing for the prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by Title IX.

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The College receives Federal financial assistance and, therefore, is subject to the provisions of Title VI and Title IX.

OCR has identified a number of elements that a postsecondary institution's grievance procedures must contain to meet the requirement that they be "prompt and equitable." OCR will look at whether the recipient has included elements such as: notice to students and employees of the procedure and where to file complaints; application of the procedures to complaints alleging discrimination and harassment carried out by employees, 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 investigation and resolution of complaints; notice to the parties of the disposition of complaints; and the right for the complainant to appeal the outcome.

Regarding the following allegations, OCR reviewed the College's investigation of the Complainant's allegations.

The College investigated the Complainant's allegations in March 2000, that her instructor:

- made sexual advances toward her;
- made numerous suggestive remarks;
- made gender discriminating statements;
- made negative comments about her pregnancy;
- threatened and humiliated her;
- made disturbing racial comments regarding black students; and
- that the Dean of Students advised her to "kiss up" to the instructor until the term was over.

The College's investigation determined that there was insufficient evidence to determine that a violation had occurred with regard to the allegations. Where the same complaint allegations are investigated through a recipient's grievance procedure, as was the case here, OCR's consideration of the complaint allegations will not begin anew unless we find that the College applied incorrect compliance standards. Following a review of the College's investigation, OCR determined that it meets OCR compliance standards. Although the Complainant stated that students interviewed in the investigation had told her additional information not included in the verbal investigative summary provided to her by the College, she was unable to provide the names of these students. Based on our review of the investigation, OCR determined, therefore, that no further action is necessary regarding the above allegation.

Regarding the Complainant's allegation that when she complained to administrative staff, she received no assistance, OCR made the following factual findings.

- The Complainant stated that she asked for someone from outside the College to investigate because she did not feel that she could get a fair investigation from the persons on campus.

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- The College's grievance procedure and Sexual Harassment Policy are included on page 16 of the Student Handbook. The Student Handbook is provided to all registered students. The procedure states that non-academic concerns should be referred to the associate dean of student affairs. It states further that every attempt will be made to resolve concerns at the lowest level possible; however, where this is not possible, the grievant may appeal in writing to the provost of the College. If still not satisfied, the student may contact the Florida State Board of Independent Colleges and Universities.
- The documentation provided by the College shows, when the Complainant made her allegation, the Dean of Students immediately conducted an investigation into the Complainant's allegations that included interviews with all College personnel involved and individual interviews with a diverse group of students from the Instructor's class.

OCR's review of the investigation conducted by the College shows that the College followed its procedures in conducting an investigation of the Complainant's allegation. There was no evidence that led OCR to question the impartiality of the investigation. The Complainant had the right to file a written appeal under the procedures set out in the Student Handbook. Although she informed OCR that she filed a written appeal, she did not provide evidence showing that she did so. Based on the findings above, OCR finds insufficient evidence to establish a violation with regard to the allegation.

Regarding the allegation that the Dean of Students found no violation and has refused to provide the Complainant a copy of the report, OCR made the following factual findings:

- According to a statement from the Dean, the Complainant asked for a copy of her summary report and the Dean told her that it was confidential and would not be given to anyone.
- In an interview with OCR, the Vice-President for Human Affairs stated that the Complainant was given a very thorough account of the investigation that covered all of the pertinent points. The Complainant stated that she was merely verbally informed of the outcome of the investigation.

Although a written report is required to document an investigation, OCR does not require that the report be given to the parties. Written notice to the parties of the outcome is required; however, at the time this investigation was conducted, the College's grievance procedure did not require that notice of the outcome of an investigation be provided in writing to the parties. The College has agreed to revise its procedures to require written notice to the parties, as specified in the attached resolution agreement.

Regarding the allegation that the College retaliated against the Complainant by failing to give her a grade for her Business Communications class and canceling all of her classes for the spring and summer terms, OCR determines whether: (1) The individual engaged

in a protected activity; (2) The entity was aware of the protected activity; (3) The entity took adverse actions against the individual; (4) There was a causal connection between the adverse actions and the protected activities; and (5) The entity cannot show legitimate, nondiscriminatory reasons for its actions.

OCR made the following factual findings:

- The Complainant engaged in a protected activity when she filed a complaint on March 24, 2000, with the Dean of Student Affairs, alleging discrimination on the basis of race and sex. College officials were aware of the protected activity because the complaint was investigated by the College.
- The Complainant stated that the adverse action occurred when the College failed to give her a grade for her Business Communications class and cancelled her classes for spring and summer terms.
- There was a causal connection in that there was closeness in time between the adverse action and the protected activity, and there was a change in treatment after the protected activity.
- The recipient's reason for not giving the Complainant a grade for her Business Communications class was that she did not complete the class. Although she was given an opportunity to be reinstated in the class after missing more than eight class hours, she elected not to sign the reinstatement form.
- The recipient's reasons for the cancellation of the classes was stated in a certified letter to the Complainant dated April 7, 2000. The Dean of Student Affairs notified the Complainant that, according to College policy, a student must pay in full any outstanding balance due to the institution for the education received during a previous quarter before he/she will be permitted to continue. She told the Complainant that she had a balance of \$890. She stated further that, once the balance was paid, the Complainant could continue her education at the College.
- The Complainant alleges that the balance on her account occurred because the College cancelled her student loan even though she did not tell them to do so.
- The Director of Financial Aid stated that the Complainant came to her office on March 16, 2000, and asked her to cancel the remaining disbursements on her student loan. The College's procedure requires that such a request be made in writing, and, even though the Director states that the Complainant refused to make the request in writing, the Director cancelled the loan on the following day. She states that on March 22, 2000, the Complainant returned to her office and asked for proof that the loan was cancelled.

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The evidence shows that the College did not dismiss the Complainant, as alleged. The Complainant may register for classes when her outstanding balance is paid. There is a conflict, however, in the statements of the two parties regarding the cancellation of her Federal Family Subsidized Loan, and there are no written documents to support either statement. Because the College did not follow its procedures in canceling a loan without a written request, the College has agreed to resolve the allegation by implementing the actions in the enclosed agreement.

In the course of OCR's investigation of the Complainant's allegations, we noted some deficiencies in the College's implementation of administrative requirements under Section 504 of the Rehabilitation Act of 1973 and Title IX with regard to:

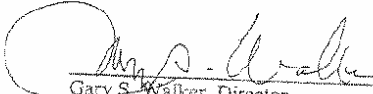
- the grievance procedure,
- notification of procedures to be followed to secure academic adjustments, related aids and services, and/or employment accommodations, and
- publishing of the names and numbers of its Section 504 and Title IX Coordinators.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. §794, and its implementing regulation, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in any program or activity receiving Federal financial assistance. The regulation at 34 C.F.R. §104.7 (a) and (b) states that each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Section 504 and shall adopt and publish grievance procedures providing for the prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by Section 504. Additionally, a recipient shall provide notice to its students and staff of the procedures to be followed by persons seeking academic adjustments, related aids and services or employment accommodations.

The College agreed to resolve the deficiencies noted by implementing the enclosed agreement. OCR will monitor the implementation of the agreement. If the College fails to implement the written agreement, OCR will immediately reopen the case and resume its investigation.

We wish to thank you for your cooperation in this matter. If you have any questions, please call Doris V. Maye, Team Leader, at 404-562-6419 or Alice Henry, Investigator, at 404-562-6379.

Sincerely,


Gary S. Walker, Director
Atlanta Office, Southern Division
Office for Civil Rights

Enclosure

Resolution Agreement
South College
Complaint #04-00-2127

South College agrees to implement the commitments outlined below to resolve procedural concerns.

1. The College will review its grievance procedure to ensure that the procedures are clear and incorporate appropriate due process standards and provide for the prompt and equitable resolution of complaints. The grievance procedure will:
 - Indicate that it is to be used for complaints and discrimination based on race, color, national origin, sex, age and/or disability;
 - Designate reasonably prompt timeframes for each major step of the complaint process;
 - Provide reliable and impartial investigation of complaints, including the opportunity to present witnesses and other evidence; and
 - Provide written notice to the parties of the outcome of the complaint and the right to appeal.
2. The College will provide notice to students and employees of the revised procedures, including where complaints can be filed.
3. The College will publish in all of its Student and Faculty Handbooks distributed to students and staff the names and numbers of its Section 504 and Title IX coordinators and a description of the procedures to be followed by persons seeking academic adjustments, related aids and services, or employment accommodations.
4. The College has notified the Complainant that she is eligible to register for classes and will assist her in reinstating her loans in order to pay her outstanding balance, if she so desires.
5. The College makes no admission of wrongdoing of any kind.

Resolution Agreement
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MONITORING

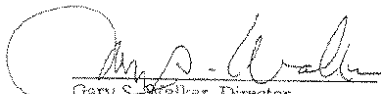
In order for the OCR to monitor the College's implementation of the Resolution Agreement, the College will provide the OCR a copy of its draft grievance procedure by February 1, 2001. Once the procedure is approved by the OCR, the College will publish the procedure. The College will provide evidence to the OCR that all of the above items have been completed by April 30, 2001.



President or Designee

1-22-01

Date



Gary S. Walker, Director
Atlanta Office, Southern Division
Office for Civil Rights

1-24-01

Date