



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

JUN 3 - 2008

Charles J. Nagele
President
Art Institute Of Fort Lauderdale
1799 S.E. 17th Street
Ft. Lauderdale, FL 33316

Re: OCR Docket # 04-08-2006

Dear Mr. Nagele:

This letter is to notify you that the U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed against the Art Institute of Fort Lauderdale (AIFL), alleging discrimination on the basis of sex.

Specifically, the Complainant alleged that the instructor of her Typography class (Instructor) subjected her to sexual harassment, i.e., unwanted touching, and that she reported the harassment to AIFL personnel, who failed to take appropriate actions to address her complaints.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, and its implementing regulation, 34 C.F.R. Part 106. Title IX prohibits discrimination on the basis of sex in any education program or activity that receives Federal financial assistance. AIFL is a recipient of such assistance and is, therefore, subject to the requirements of Title IX. Accordingly, OCR had jurisdiction to investigate the complaint.

OCR investigated the following issues:

- Whether the Instructor subjected the Complainant to a hostile environment based on sex in noncompliance with 34 C.F.R. § 106.31(a).
- Whether AIFL discriminated against the Complainant, on the basis of sex, by failing to take prompt and effective measures to address her complaints of sexual harassment in noncompliance with 34 C.F.R. § 106.8 (b).

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In reaching a determination, OCR reviewed AIFL's procedures and policies and data pertinent to the issues of the complaint. OCR also interviewed AIFL personnel, the Complainant, and other relevant witnesses. Based on the information obtained, OCR determined there was insufficient evidence to support that AIFL failed to comply with 34 C.F.R. § 106.31 but sufficient evidence to support a finding that AIFL failed to fully comply with the requirements of § 106.8(b). We set forth below the bases for our findings.

Legal Standards

Sexual Harassment

Sexual harassment is unwelcome conduct of a sexual nature. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. Sexual harassment of a student can deny or limit, on the basis of sex, the student's ability to participate in or to receive benefits, services, or opportunities in the school's program. Sexual harassment of students is, therefore, a form of sex discrimination prohibited by Title IX. It is important to recognize that Title IX's prohibition against sexual harassment does not extend to legitimate nonsexual touching or other nonsexual conduct.

OCR considers a variety of related factors to determine if a hostile environment has been created, i.e., if sexually harassing conduct by an employee, another student, or a third party is sufficiently serious that it denies or limits a student's ability to participate in or benefit from the school's program based on sex. OCR considers the conduct from both a subjective and objective perspective. In evaluating the severity and pervasiveness of the conduct, OCR considers all relevant circumstances, such as the type, frequency, and duration of the conduct.

Recipients generally provide aids, benefits, and services to students through the responsibilities they give to employees. If an employee who is acting in the context of carrying out these responsibilities over students engages in sexual harassment – generally this means harassment that is carried out during an employee's performance of his or her responsibilities in relation to students, including teaching – and the harassment denies or limits a student's ability to participate in or benefit from a school program on the basis of sex, the recipient is responsible for the discriminatory conduct. The recipient is, therefore, also responsible for remedying any effects of the harassment on the victim, as well as for ending the harassment and preventing its recurrence.

Grievance Procedure

The Title IX regulation, at 34 C.F.R. § 106.8(a), requires that each recipient designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX. The coordinator's responsibilities include investigating complaints alleging noncompliance with Title IX. Recipients are also required to notify all students and employees of the name, address, and telephone number of the designated coordinator. Section 106.8(b) requires that each recipient adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints under Title IX. OCR has identified a number of factors to consider in evaluating whether a recipient's grievance procedures are prompt and equitable, 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 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 recipient will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate.

The Title IX implementing regulation, at 34 C.F.R. § 106.31(a), further states that no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity operated by a recipient.

Factual Findings

The Complainant, a student at AIFL, alleges that the Instructor touched her inappropriately two times and used profanity in class. The Complainant noted that the profanity was general, and not sexual, in nature. She said that the first time that the Instructor touched her, he rubbed the back of her neck. She stated that this bothered her, but she did not report it. On September 11, 2007, the Complainant alleges the Instructor touched her again. According to her, this time he rubbed his fingers across her back very slowly. The Complainant did not say anything to the Instructor. However, that same day, the Complainant reported the two incidents of inappropriate touching to the Assistant Dean of

Student Affairs. Later, the Complainant also spoke with AIFL's Director of Human Resources (Director) about the incidents.

The Complainant informed OCR that she was unequivocal that her complaint to AIFL was a sexual harassment complaint. The Complainant states that she was not told about the outcome of AIFL's investigation. She asked for the results but was told that she was not permitted to know the outcome. At the conclusion of AIFL's investigation, she was asked if she would attend a meeting so that the Instructor could apologize to her. The Complainant stated that she declined because she did not want to speak with the Instructor and did not want the Instructor to address her directly.

AIFL asserts that it responded promptly and appropriately to the Complainant's concerns. According to AIFL personnel, after the Complainant informed the Assistant Dean about her concerns, the Complainant was asked to provide a written statement. The Complainant was also excused from attending classes with the Instructor for the rest of the quarter. The Assistant Dean made arrangements for the Complainant to complete and turn in her final examination without contact with the Instructor. The Assistant Dean also consulted with the Director regarding the complaint because it involved an instructor. Both the Assistant Dean and the Director told OCR that the Complainant said that she was filing a general complaint against the Instructor regarding his lack of professionalism and not a sexual harassment complaint. Nonetheless, since the complaint involved an allegation of inappropriate touching, the Assistant Dean and Director investigated the complaint as a sexual harassment complaint. As a result of the complaint, the Instructor was warned not to use profanity in the classroom and reminded that he should respect the personal space of his students.

The Director contacted the Complainant on October 4, 2007, to let her know that her complaint had been addressed. The Director acknowledged that the Complainant asked for the results of the investigation but that the information was not shared with the Complainant. At that point, the Complainant informed the Director that the Instructor had spoken to her in the hallway and she requested that the Instructor not speak to her. The Director stated that the Instructor requested a meeting with the Complainant to apologize for offending her, but the Complainant did not want a meeting with the Instructor. The Director thought that the Complainant was satisfied with the outcome. Thus, he considered the matter to be closed until he received notification of the OCR complaint. The Complainant has not reported any further problems with the Instructor have to AIFL.

OCR established that AIFL has appropriately designated a Title IX Coordinator, the Dean of Student Affairs, and notified students and staff of its policy against

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sex discrimination, including sexual harassment, and procedures for addressing complaints.

Issue 1: Whether the Instructor subjected the Complainant to a hostile environment based on sex in noncompliance with 34 C.F.R. § 106.31.

The conduct complained of by the Complainant was that the Instructor touched her twice on two separate occasions and that the contact was unwelcome. The Instructor acknowledged that he touched the Complainant on the shoulder on the date she filed her complaint but denied that he stroked her back slowly or that any contact that he had with the Complainant was sexual in nature. Rather, he was attempting to get the Complainant's attention in a computer laboratory by touching her shoulder. He also had no recollection of the first incident. The Complainant stated that the contact was unwelcome, made her uncomfortable, and was offensive.

As noted above, to create a sexually hostile environment the conduct must be sexual in nature and must be, from an objective and subjective perspective, sufficiently severe, persistent, or pervasive as to constitute a hostile environment that denies or limits a student's ability to participate in or benefit from the school's program based on sex. In most cases, a hostile environment will exist if there is a pattern or practice of harassment or if the harassment is sustained and nontrivial. The more severe the conduct, the less the need to show a repetitive series of incidents. Typically, unless severe, a single action will not be deemed sufficient to create a hostile environment.

Analysis and Conclusion

Applying these principles, OCR determined that the actions complained of by the Complainant, although subjectively offensive, were not sufficiently severe, pervasive, or persistent to rise to the level of a hostile environment based on sex. The incidents were isolated, occurring only twice and for a very brief period of time (only a matter of seconds).

Issue 2: Whether AIFL discriminated against the Complainant, on the basis of sex, by failing to take prompt and effective measures to address her complaints of sexual harassment in noncompliance with 34 C.F.R. § 106.8(b).

Under Title IX, a recipient has an obligation to respond to complaints of alleged sexual harassment. OCR determined that the Complainant reported the alleged conduct to the administration of AIFL. In response, the AIFL took prompt action to investigate the matter and determine whether the alleged conduct occurred. In doing this, the AIFL interviewed both the Complainant and the Instructor. Although AIFL determined that no sexual harassment occurred, it nonetheless

took effective action to ensure that the complained of conduct was not repeated. The Instructor was reminded to respect the personal space of his students and not to use profanity in class. Additionally, AIFL officials made arrangements so that the Complainant was able to complete her class without further contact with the Instructor.

As noted above, one element of a grievance procedure that is consistent with Title IX requirements is that it requires that parties be notified of the outcome of the recipient's investigation of the grievance. In the instant case, AIFL acknowledged that all it told the Complainant was that the matter had been addressed, but it did not communicate the outcome of the investigation. In order for a grievance procedure to be equitable, such notice to the parties must occur. Additionally, AIFL's grievance procedures require such notification in the form of a written determination; however, that provision was not implemented in the instant case.

AIFL, however, already has taken steps to voluntarily resolve this compliance issue. On April 15, 2008, via e-mail, counsel for AIFL sent a memorandum to all AIFL staff who are in positions that may necessitate their involvement in investigating student complaints of discrimination or harassment. The memorandum reminded those individuals that both the accused and the complainants are to be informed of the results of investigations in writing so as to ensure closure to the complaining person and the accused and to meet Title IX obligations.

Analysis and Conclusion

Based on the foregoing, OCR finds that AIFL commenced and completed an investigation of the allegation in a timely fashion. Although AIFL did not conclude that the alleged conduct by the instructor violated its policy against sexual harassment, it nonetheless took prompt action to investigate the complaint and to prevent such conduct in the future. Additionally, as to the one compliance issue identified with respect to the notification to the parties of the outcome of that investigation, OCR finds that the AIFL has taken steps to voluntarily resolve that issue and to ensure that parties are notified of the outcome of investigations in the future. In the instant case, this letter constitutes notification to the Complainant of the outcome of AIFL's investigation of her complaint, and there are no current allegations appropriate for further complaint resolution.

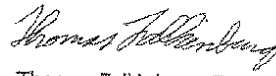
Federal regulations prohibit intimidation of or retaliation against anyone who files a complaint with OCR or who takes part in an investigation. Under the Freedom of Information Act, it may be necessary to release this document and related

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correspondence and records upon request. In the event that OCR received such a request, we will seek to protect, to the extent provided by law, personally identifiable information that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

This letter concludes OCR's investigation of this complaint, and we are closing the complaint as of the date of this letter. We appreciate the assistance and cooperation you and your staff have extended to OCR during the investigation of this complaint. If you have any questions about this letter, please contact Ms. Serena E. Mosley-Day, Esq., at (404) 562-6359 or by e-mail at serena.mosley-day@ed.gov, or me at (404) 562-6353.

Sincerely,



Thomas Falkinburg, Esq.
Team Leader