



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

November 8, 1999

Dr. Thomas Reuschling
President
Florida Southern College
111 Lake Hollingsworth Drive
Lakeland, Florida 33801

Dear Dr. Reuschling:

Re: Complaint #04-99-2116
Closure Letter

The Office for Civil Rights (OCR) has completed its investigation of the above-referenced complaint against Florida Southern College (College). [REDACTED] (Complainant) alleged that the College discriminated against her by subjecting her to a hostile environment that interfered with her learning experience because they failed to stop her Theater professor, [REDACTED] (Professor), from harassing her on the basis of sex and religion. She also alleged that the College did not have procedures for handling such complaints. The Complainant was informed that the religion portion of the complaint does not fall within the purview of OCR, and that it was referred to the Department of Justice.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. Section 1681 *et seq.* and its implementing regulation, 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex by recipients of Federal financial assistance. The College receives Federal financial assistance. It, therefore, is subject to the requirements of Title IX.

Section 106.8 (a) and (b) of the regulation implementing Title IX requires recipients to designate at least one employee to coordinate its efforts to comply with and carry out its Title IX responsibilities, including any investigation of any complaint alleging its noncompliance with Title IX or alleging any actions which would be prohibited by Title IX. It also requires the recipient to notify all its students and employees of the name, office address and telephone number of the appointed employee and to adopt and publish grievance procedures for the prompt and equitable resolution of complaints alleging prohibited actions. Section 106.9(a) requires recipients to disseminate information about its non-discrimination policy on the basis of sex and the protections against such discrimination that are assured by Title IX.

The regulation implementing Title IX at 34 C.F.R. Section 106.31(a) and (b) generally prohibits recipients from excluding persons from participation in, denying persons the benefits of, or discriminating against any person on the basis of sex under any program operated by the

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recipient. These subsections prohibit recipients from taking any of the following actions on the basis of sex: treating persons differently in the provision of any aid, service or benefit; subjecting persons to separate or different rules of behavior, sanctions, or other treatment; discriminating against persons in the application of rules of appearance; or otherwise limiting any individual in the enjoyment of any right, privilege, advantage, or opportunity. Allegations of discrimination based on a sexually hostile environment are evaluated under these provisions.

A sexually hostile environment exists when unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature by another student, a school employee, or a third party are sufficiently severe, persistent, and pervasive to limit a student's ability to participate in or benefit from an educational program or activity or to create a hostile or abusive educational environment. Where OCR finds: (1) a sexually hostile environment, (2) of which a recipient has actual notice, and (3) where the recipient has not taken action reasonably calculated to redress this hostile environment, OCR will find the institution in violation of Title IX.

OCR's investigation of the allegations included an analysis of records and documents pertinent to the issues of the complaint, interviews, and statements by the Complainant and College officials. Our findings regarding the allegations are as follows:

LACK OF SEXUAL HARASSMENT POLICIES AND PROCEDURES

With respect to the allegation that the College did not have established procedures and personnel identified to handle complaints of sexual harassment, OCR found the following:

- A statement of non-discrimination is found in the College catalog, the Student Life Handbook, and the College Handbook.
- Sexual Harassment Policy and Procedures exist, but are not dated. The preamble and statement of policy in the policies and procedures include non-discrimination statements. The policies and procedures contain the following requirements in pertinent part:

PROCEDURES

COMPLAINTS: At least six faculty and staff will be appointed as sexual harassment policy facilitators. Names, responsibilities, work locations, phone numbers will be routinely and continuously posted. Complaints will be accepted orally or in writing, will be taken seriously, will be investigated, will be treated in discreet manner. Anyone in a supervisory position who is made aware of such actions is obligated to report such incidents directly to a sexual policy facilitator. Identity of the complainant will be disclosed only on a need to know basis, unless or until FORMAL proceedings are initiated.

INVESTIGATIONS: All complaints will be investigated by a sexual harassment policy facilitator, who will produce a written report that, with the investigation file, will be shown to the complainant. The facilitator will attempt to resolve complaint informally. If s/he cannot resolve it, the complaint may be brought before a meeting of the sexual harassment policy facilitators. They will determine whether to pursue job or disciplinary action, and may assemble hearing body for this purpose.

Part III states that the Human Resources Director will act as Grievance Coordinator and insure continuity in resolving sexual harassment complaints.

- A memorandum dated October 23, 1998, was sent to all FSC faculty and staff from human resources. It lists nine Sexual Harassment Policy Facilitators for the College, including Ms. Roberta L. Anderson-Barnes, Human Resources Director, and states that students, faculty and staff are encouraged to report all types of harassment in accordance with the policies and procedures. It further states that harassment of all types is forbidden, and will be dealt with in a serious and professional manner. This memorandum was disseminated as part of a sexual harassment package to faculty and adjunct faculty on October 23, 1998, and to students on January 14, 1999. The package also included a clarification of what sexual harassment is, a self-quiz, and a copy of the policies and procedures described in #3 above. A signature page was attached to the copy of the student packet that was sent to OCR, showing the signatures of students in the residence halls who had read the material. This page includes the signature of the Complainant.
- The package that went out to faculty and students includes a cover message saying "if you have questions, contact human resources at ext. 3964," but includes no name or office address. It also contains a definition of sexual harassment.
- The Complainant does not recall having seen this sexual harassment information, but other information indicates that she was aware of the sexual harassment policy by January 19, 1999.
- According to the College, Ms. Roberta L. Anderson-Barnes, Director of Human Resources, has been appointed as the Title IX coordinator, consistent with the sexual harassment policies and procedures.

Based on the above information, OCR has determined that the College did adopt, publish, and disseminate grievance procedures for resolving complaints alleging sexual harassment. However, the College agreed with OCR that there was room for improvement in its sexual harassment policies and procedures, especially at the informal stage. College representatives also agreed that they could do a better job of publicizing the College's grievance procedures and

the identity and location of the Title IX coordinator. They, therefore, entered into the attached agreement with OCR, implementation of which will be monitored by this office.

INVESTIGATION OF COMPLAINT OF DISCRIMINATION ON THE BASIS OF A SEXUALLY HOSTILE ENVIRONMENT

With respect to the allegation that the College discriminated against the Complainant by subjecting her to a hostile environment that interfered with her learning experience when it failed to stop the Professor from harassing her on the basis of sex, OCR found the following:

- At the time of the alleged incidents, the Professor served as the Chairman of the Theater Department. As an Assistant Professor, he also taught several courses in the department, such as Introduction to the Theatre, Introduction to Acting, Intermediate Acting, and Advanced Acting, Directing for the Theatre, Theatre Management, Makeup for the Stage, Actor's Voice, and Acting; Advanced Scene Study. He also directed several plays.
- The Complainant brought her concerns to College administrators in early December of 1998. At that time, she requested anonymity and requested no specific corrective action. These concerns included the use of sexual expletives in the classroom and in rehearsals and the selection of plays and assignment of acting roles that were sexually explicit or had sexual themes.
- Within a few days, one of the administrators discussed the charges with the Professor and did informal counseling.
- In mid-January, the Complainant reported that the objectionable behavior was continuing, and an administrator again counseled the Professor. Two other students (Students) corroborated the Complainant's allegations concerning the use of sexual expletives and the selection of plays with sexual themes and assignment of roles that were sexually explicit.
- Later that month, the Professor was counseled, advised that administrators would visit his classes, and told of the potential for disciplinary action. This information was shared with the Complainant and the Students, who then indicated they wanted the Professor fired. When the administrator advised them that a formal hearing to do that would require that they break their confidentiality, they said they would advise the administrator by February 1.
- On February 2 and 3, there were discussions among several administrators regarding the best way to continue to work on resolving the informal, confidential complaint, and at what point the complaint would become formal.
- A letter dated February 2, addressed "To Whom it May Concern", was received in the office of the President of the College (President). This letter complained of unprofessional conduct

on the part of the Professor, including a reference to "sexual connotations" to the females in the Theater Department which, along with religious discrimination, created a hostile environment. This letter is signed by the Complainant and the Students.

- A letter dated February 4, addressed to the President, contains specific allegations of unprofessional behavior and use of sexual expletives on the part of the Professor. This letter, signed by the Complainant, indicates that she perceived a failure on the part of the College administration to take action regarding her allegations.
- On February 4, College administrators met with the Professor to again discuss the allegations and the possibility of his resigning immediately as Department Chair, withdrawing from his course for the May Option in Italy, securing a visiting director for the last play of the year, and inviting a colleague to visit his classes (hereafter referred to as options). The next day, one of the administrators met with the Complainant to discuss these options.
- On February 8, an administrator received a letter from the Professor, agreeing to all the options previously discussed and indicating that it was for the benefit of the department. This letter indicates that the identity of the Complainant was still confidential at this point. The offer was accepted by the President.
- On February 9, the President met with the Complainant and the Students and explained the options discussed and agreed upon between the College and the Professor. The Complainant and Students did not feel this was sufficient to change the objectionable behavior. The President suggested that they report to him if the Professor failed to improve. The President's understanding was that the Complainant and Students still desired that their identities remain confidential.
- On February 15, an administrator met with the Complainant and the Students. She informed them that the agreed upon options had been implemented, and that another instructor would be sought for the remaining required courses for which the Professor would have been the instructor for the Complainant.
- Subsequently, several of the Professor's classes were observed by several members of the College staff, with no evidence of sexual harassment.
- On March 26, the administrator met with the Complainant and the Students. The Students indicated a noticeable improvement in the department since the change in the department chair.
- On April 26, the Complainant notified an administrator she wished to pursue a formal complaint and hearing after May 10. The next day, the administrator met with the Complainant, who said she believed the Professor knew her identity and was retaliating. She

provided, as an example, his discouraging his students from auditioning for the orientation play that was to be directed by the Complainant.

- The College indicated, and the Complainant verified, that the Professor has repeatedly made it known in the past that he did not support the orientation play, regardless of who directed it. The College determined that the Complainant's request for a formal hearing was actually an appeal of the investigation made and the actions taken during the informal process, rather than a new charge, and did not accept the formal complaint.
- There is no evidence of prior complaints of sexual harassment against the Professor. Additionally, OCR was unable to obtain any evidence from either the Complainant or the Students of sexual harassment or a sexually hostile environment created by the Professor subsequent to the enactment of the agreed-upon options that resulted from the informal investigation by the College.
- An administrator (vs. a specific facilitator, as required in their procedures) expeditiously attempted to investigate and resolve the complaint. There is no evidence that there was a formal written report of the informal investigation, as required by the College's procedures. However, the progress of the informal investigation and the agreement between the College and the Professor were shared with the Complainant on several occasions.

OCR was unable to conclude that a sexually hostile environment was created as a result of the Professor's alleged actions and statements because of the nature of the courses and the fact that a number of the alleged acts of sexual harassment were directly related to course content and assignments. We, nonetheless, determined that the College's actions in response to the complaint were appropriate and timely in substance, if not procedurally precise. In addition, the College met the lingering needs of the Complainant by making alternative arrangements for her to complete her required courses without having to take classes from the Professor. The College alleges, and no evidence contradicts, that the Professor's behavior has improved, and there have been no complaints since the implementation of the agreement between the Professor and the College.

Based on the above information, OCR has determined that, although the College did not follow its sexual harassment complaint procedures precisely, it did accept the complaint, take it seriously, treat it in a discreet manner, investigate the allegations in a timely manner, and take action reasonably calculated to redress the allegation of a sexually hostile environment if a hostile environment existed. For these reasons, OCR has determined that there is insufficient evidence of a violation of the Title IX regulations.

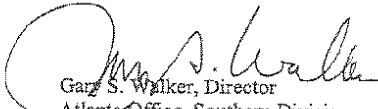
In the interest of assisting the College with improving its harassment policies and procedures, we have included a copy of a publication entitled "Protecting Students from Harassment and Hate Crime". Although this publication was designed for elementary and secondary school districts,

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we believe both the theory and the specific guidance will be of assistance to the College in improving its program.

We appreciate the cooperation extended by you and your staff during the investigation of this complaint. If you have any questions, please contact Ms. Vickie A. Barrows at (404) 562-6365.

Sincerely,



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


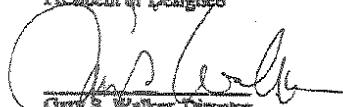
Enclosures

RESOLUTION AGREEMENT
U.S. DEPARTMENT OF EDUCATION, OFFICE FOR CIVIL RIGHTS (OCR)
FLORIDA SOUTHERN COLLEGE, FLORIDA
COMPLAINT #04-99-2116

Florida Southern College (College) agrees to implement the commitments set forth below to resolve the above-referenced complaint. It is understood that the parties have voluntarily entered into this agreement, and the agreement does not constitute an admission by the College, or a finding by OCR, of any violation of Title IX. It is understood that OCR may reopen its investigation of the above-referenced complaint if the College fails to comply with material provisions of this agreement.

1. The College will redistribute its sexual harassment policies and procedures to all current students at pre-registration in November of 1999 and to new students in January of 2000. The College will notify OCR in writing, by January 31, 2000, how and when these distributions were made.
2. The College will revise its sexual harassment policies and procedures during the summer of 2000 to clarify its procedures and make other improvements. It will distribute the revised policies and procedures to all students and faculty and provide briefings on them to college staff. A copy of the revised procedures will be provided to OCR by September 30, 2000, along with a written statement of how and when the distributions were made and to whom and when the briefings were held.
3. The revised procedures themselves or a notice of where they can be found will be included in the next edition of the College Handbook.
4. The College will publicize the name, location, and phone number of the Title IX coordinator in the next edition of the College Handbook and in other publications that will effectively disseminate this information to students.

IN AGREEMENT:

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|  Nancy Aumann President or Designee | <u>11-1-99</u> Date |
|  Gary S. Walker, Director Atlanta Office, Southeast Division Office for Civil Rights | _____ Date |