



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS
MIDWESTERN DIVISION, CHICAGO OFFICE

JUL 17 2003

Mr. Gerald Lamkin
President
Ivy Tech State College
Central Office
1 W 26th Street
Indianapolis, Indiana 46208-1763

Re: OCR #05-03-2057

Dear Mr. Lamkin:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its complaint resolution activities with respect to the subject complaint filed against Ivy Tech College (hereinafter College). The Complainant alleged that she was subjected to discrimination on the basis of sex. Specifically, the Complainant alleged that she was subjected to sexual harassment by a male student (hereinafter Student A) in a two-week course, Boiler and Pressure Vessel Training Course, she was taking at the College, from August 18, 2002, through August 30, 2002, such actions thereby creating a hostile environment. The Complainant further alleged that the College failed to adequately respond to her reports of the incidents of sexual harassment by Student A.

As a recipient of Federal financial assistance from the Department of Education, the College is subject to the provisions of Title IX of the Education Amendments of 1972, (Title IX), as amended 20 U.S.C. sec 1681 *et seq.*, and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination based upon sex in education programs and activities.

During the complaint resolution process, OCR interviewed witnesses and reviewed documents provided by the Complainant and the College. OCR has determined that there is insufficient evidence to support the allegations of discrimination made in the complaint.

The Complainant was a student attending the Boiler and Pressure Vessel course from August 18, 2002 through August 30, 2002. The two-week course was designed to prepare students for the National Board Exam. The Complainant was the only female in the class out of sixteen students. Student A sat behind the Complainant in the classroom.

The Complainant asserts that, in class and on a field trip, Student A made a series of negative remarks directed towards her that used two negative slang terms for a female. The Complainant states that, starting on August 22, 2002, Student A began to make loud inappropriate comments in class. According to the Complainant, neither the other students in the classroom or the instructors took any action about Student A's loud comments. The Complainant stated that, on a field trip on August 27, 2002, Student A made inappropriate comments directly at her. Following the field trip, the Complainant said she became very concerned for her safety.

The Complainant contacted the College's Administrative offices the evening of August 27, 2002, and spoke to the secretary regarding her concerns. The Executive Director for Corporate and Community

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Services returned the Complainant's call and arranged to meet with her the next morning to discuss her concerns.

The Complainant met with the Executive Director and the Dean of Student Affairs on the morning of August 28, 2002. The Complainant stated that her intention was to file a sexual harassment complaint against Student A. According to the Complainant, she was told that there was no complaint form for the filing of a sexual harassment complaint. The Complainant said she asked that College personnel take down her formal statement. According to the Dean, the Complainant was informed that the College does not utilize a formal complaint form. The Dean said that she advised the Complainant to put her concerns in writing. The Dean indicates that she asked the Complainant to return the written statement by 4:00 p.m. that day. The Complainant stated that neither the Dean of Students nor the Executive Director took notes during the meeting. The College provided OCR with notes from the College personnel from the Complainant's telephone conversation with the secretary and the Director as well as the meeting the next day.

The Complainant provided OCR with documents and information and the College provided notes of the meetings and conversations with the Complainant. In the meeting with the College's staff, the Complainant alleged that Student A used inappropriate language in the classroom as he sat behind her. The Complainant stated that she did not inform the instructors of her concerns about the comments. The Complainant said that she believed that the students and instructors heard Student A's remarks but chose not to take any action. The Complainant asserted that Student A also made inappropriate comments directly at her during an August 27, 2002, field trip. The Complainant stated that Student A looked directly at her when making offensive remarks on the field trip. The Complainant believed that the instructors and students also heard the remarks on the field trip, but they ignored them and did not take any action against Student A.

The Complainant stated that, subsequent to the meeting, she planned to return to the class to confront the students and the instructor. The Dean of Students indicated that she told the Complainant that she would first speak to the students and the instructor, that the Complainant should not take any action until advised otherwise. The Dean and the Complainant stated that the Dean also offered to have someone accompany the Complainant to the remaining class sessions but the Complainant declined the Dean's offer. The Complainant states that the Dean of Students instructed her to return to her hotel and she would be contacted again before noon. The Complainant said that, when she did not hear from the Dean by noon, she unsuccessfully attempted to telephone the Dean. The Complainant said that she also stopped by the Dean's office to speak to her. The Complainant said that, after her unsuccessful attempts to reach the Dean, she felt uncomfortable remaining in the course and she returned to her home.

While the Complainant indicated that there was no formal complaint form, the College provided OCR with a copy of its formal written "Policy and Complaint Procedure Against Harassment" for sex harassment cases. The procedure provides that, if the complaint is not resolved to the student's satisfaction through the informal procedure, the student shall reduce the grievance to writing.

In an interview with OCR, the Dean stated that she initiated an investigation of the Complainant's allegations of sexual harassment immediately following the August 28, 2002, meeting. The Dean informed OCR that she attempted to contact the Complainant at 1:20 p.m. at the hotel but was informed that the Complainant had checked out. The Dean said that she intended to go by the hotel to obtain the Complainant's written statement. The Dean of Students said that she investigated the complaint despite the fact that she did not have the Complainant's written statement. The Dean said that she based her investigation on the information provided by the Complainant by telephone the previous evening and the information provided at the meeting. According to the Dean, the Complainant stated that she could be reached in her hotel room until 4:00 p.m. that afternoon.

College personnel interviewed the two course instructors and three students. The investigation disclosed that Student A and a second student used words that could be considered offensive. Student A stated that his comments were never directed at the Complainant and he stated that he was not aware that the Complainant took offense to his language. Student A indicated that he made the comments to a friend with whom he works (Student B) who also was taking the course. Student A also disputed saying anything inappropriate to the Complainant on the August 27, 2002, field trip. Student B stated that Student A called him the names and directed remarks at him but not towards the Complainant. Another student stated that he heard Student A's comments but he said that the remarks were not directed at the Complainant. One of the instructors indicated that Student A and Student B finished their work quickly and teased each other but their remarks were not directed towards the Complainant. He indicated that had he been made aware of the Complainant's concerns, the other instructor and he would have addressed the situation immediately. The second instructor said that he heard Student A and Student B making comments between themselves but the remarks were not directed towards the Complainant. He indicated that the remarks were related to a popular television show that uses vulgar language, including the comments used by the students. This instructor stated that he was unaware of any incidents on the field trip.

On September 3, 2002, the College issued its investigative findings. The College found that offensive language was used in the presence of the Complainant, but that witnesses disputed that the remarks were directed at the Complainant. The investigation revealed that the instructors did not hear any offensive language being used on the field trip nor did the Complainant bring her concerns to their attention. The College determined that the evidence was inconclusive and, therefore, the College could not take disciplinary action against any of the students or instructors based on the information obtained in the College's investigation. In the College's interviews, the instructors and the students were informed of the College's policies relating to sexual harassment and, subsequent to the complaint investigation, the instructors attended training on sexual harassment.

OCR interviewed one of the instructors from the course. The instructor informed OCR that there were a few occasions during the class when he heard Students A and B exchange inappropriate comments. The instructor stated that Student A never directed any inappropriate language at the Complainant. The instructor said that he did not hear any inappropriate language on the August 27, 2002, field trip. The instructor told OCR that the Complainant had not expressed her concerns to him or stated that she had been subjected to sexual harassment. The instructor stated he would have immediately rectified the situation if he had been made aware of the Complainant's concerns. The Instructor informed OCR that, subsequent to the course, he attended training on sexual harassment.

The Title IX implementing regulation at 34 C.F.R. § 106.31(a) provides 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 education program or activity operated by a recipient receiving Federal financial assistance. Sexual harassment of a student can be discrimination in violation of Title IX. Sexual harassment is unwelcome conduct of a sexual nature that denies or limits, on the basis of sex, the student's ability to participate in, or to receive benefits, services, or opportunities in, the recipient's program. Upon notice of possible sexual harassment of a student, a recipient is responsible for taking immediate and appropriate steps to investigate or otherwise determine what occurred and for taking prompt and effective steps reasonably calculated to end any harassment, eliminate a hostile environment if one has been created, and prevent the harassment from recurring.

The College investigated the Complainant's allegation that she was subject to sexual harassment by Student A in the Boiler and Pressure Vessel Training course. College personnel interviewed three students, including Student A, and the two course instructors. By letter, the College informed the

Complainant of the College's findings. While the investigation revealed that certain inappropriate remarks were made, the witnesses disputed that the remarks were directed at the Complainant. The College informed the Complainant of the results of the investigation in a letter dated September 3, 2003. The College's letter concluded that the evidence was inconclusive and the College could take no further action based on the information and statements obtained. In addition, the College reminded the students and instructors of its sexual harassment policies and provided the instructors with training to assist them to identify sexual harassment and to respond appropriately.

OCR has determined that the evidence is insufficient to support the Complainant's allegation that the College failed to adequately respond to her sexual harassment complaint. The College promptly and appropriately investigated the Complainant's allegation and responded appropriately based on the investigation. Based on OCR's investigation, including its review of the College's investigation, OCR is deferring to the College's conclusion that the evidence regarding Student A's sexual harassment allegation was inconclusive. OCR concludes that there is insufficient evidence that the College discriminated against the Complainant on the basis of sex.

This concludes OCR's resolution activities with respect to this complaint, which is being closed effective the date of this letter. We wish to thank you and your staff for the cooperation and courtesy extended to OCR. If you have any questions regarding this letter, please contact Ms. Sherry Rosenblum, Equal Opportunity Specialist, or me, at 312/886-8398.

Sincerely,


James E. Heffernan
Team Leader