



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS
MIDWESTERN DIVISION, CHICAGO OFFICE

AUG 11 2006

Dr. John W. Byrd
President
Simpson College
701 North C Street
Indianola, IA 50125

Re: OCR Docket #05062050

Dear Dr. Byrd:

This letter is to advise you of the disposition of the referenced complaint against Simpson College, which the U.S. Department of Education (Department), Office for Civil Rights (OCR), received on February 14, 2006. The complaint alleged that the College discriminated against a student on the basis of sex when it failed to take prompt and effective steps in response to her complaints of alleged incidents of sexual harassment that occurred on September 18 and September 19, 2005. The Complainant contended that a male student (Student A) who lived in the same dormitory in which she lived, subjected her to unwelcome sexual touching on September 18, 2005, and entered her dormitory room without her permission and engaged in unwelcome sexual behavior on September 19, 2005.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.*, and its implementing regulation, 34 C.F.R. Part 106. Title IX prohibits discrimination on the basis of sex in education programs and activities that receive federal financial assistance from the Department. As a recipient of federal financial assistance from the Department, the College is subject to Title IX and its implementing regulation. Accordingly, OCR has jurisdiction over this complaint.

During its investigation of this matter, OCR conducted interviews and reviewed documents provided by the Complainant and the College. Based on a careful analysis of this information, OCR has determined that there is insufficient evidence to find that the College violated Title IX as alleged. The basis for OCR's determination is discussed below.

Facts

The College provided OCR a copy of the Simpson College 2005-2006 Student Handbook and stated that it distributed the Handbook to all full time College students through campus mail in August 2005. The Handbook is also available on the College's website and specifies the College's policies prohibiting abuse, harassment, assault and exploitation based on sex. It also provides the

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procedures students and College administrators should follow with regard to complaints based on sex, and lists the possible sanctions that may be imposed if a violation is found. The Handbook includes definitions of sexual harassment, sexual abuse, and sexual exploitation and provides information on effective consent, as well as the College's judicial procedures.

The Student Handbook advises students to file complaints of sexual abuse, harassment, assault and/or exploitation with the Office of Security, the Associate Dean of Students or the Office of Student Development. The Handbook further provides that the Associate Dean, director of security, and/or any other appointed investigative party shall conduct interviews with the complainant, respondent, and any other involved parties. The Handbook indicates that in cases where either sexual abuse, harassment, assault and/or exploitation is found, the College shall follow the student judicial process and shall notify the complainant and the respondent of the outcome. Any student found responsible for sexual abuse, assault, harassment, or exploitation shall receive sanctions ranging from warning to expulsion.

The Complainant enrolled at the College as a freshman in fall 2005. She resided in Kresge Hall, a coeducational dormitory, during the 2005 – 2006 academic year. The Complainant stated that Student A, who lived in the same dormitory during the fall 2005 semester, subjected her to unwelcome sexual touching in the hallway outside of her room on September 18, 2005, and broke into her dormitory room and engaged in unwelcome sexual conduct on September 19, 2005. The Complainant was not present in her room during the September 19, 2005, incident, but Student A's roommate informed the Complainant that Student A unlawfully obtained the combination lock to the Complainant's room and entered the room. The Complainant stated she complained about the unwelcome sexual touching and conduct to a residence life community advisor (Community Advisor) on September 18 and September 19, 2005, and that she complained to campus security about both incidents on September 20, 2005.

The Complainant contends that the College did not respond promptly or effectively to her complaints. In support of her contention, the Complainant stated that she complained to her Community Advisor about Student A's behavior the evening of September 18, 2005, but the Community Advisor did not take action on her complaint until September 19, 2005. The Complainant told OCR that after the Community Advisor witnessed Student A sexually touch the Complainant the evening of September 18, 2005, she approached the Community Advisor for help. The Complainant averred that the Community Advisor merely laughed and did nothing. The Complainant stated that there were no other witnesses to Student A's unwelcome sexual conduct on September 18th nor did anyone witness the Complainant reporting the incident to the Community Advisor that evening.

Furthermore, the Complainant stated that campus security removed Student A from Kresge Hall on September 22, 2005, two days after she had reported the incident to campus security and two days later than it had pledged to remove him. The Complainant told OCR that Student A's presence in Kresge Hall for those two days made her feel uncomfortable. The Complainant admitted that she had no contact with Student A during these two days or anytime thereafter.

The Community Advisor is a female student who was a sophomore during the 2005 – 2006 academic year. As a Community Advisor, her duties included actively aiding and advising students who live in the dormitory, being knowledgeable of campus resources and able to refer students to them when necessary, responding to emergency and crisis situations, gathering facts and documenting incidents impacting the smooth operation of the residence life program and reporting emergency incidents and policy violations to appropriate professional residence life program staff.

The Community Advisor told OCR that she did not witness Student A sexually touch the Complainant on September 18, 2005, and that the Complainant did not approach her or report the incident to her on September 18, 2005. She told OCR that she first learned of Student A's alleged sexual misconduct on September 19, 2005, when the Complainant and the Complainant's roommate told her about both the September 18th and the September 19th incidents. The Community Advisor prepared an Incident Report based on their recitation of the events and forwarded the report to her supervisor, the Area Community Coordinator, the evening of September 19, 2005. There is no indication in the report, however, that the Complainant's roommate was present when the Complainant reported these events to the Community Advisor.

The Complainant's roommate told OCR that she did not witness the alleged incidents on September 18 and 19, 2005. The roommate also stated that on September 19, 2005, she did not report or accompany the Complainant to report the alleged misconduct to the Community Advisor.

On September 20, 2005, the Area Community Coordinator contacted the Complainant and asked for her version of the events. The Complainant provided the Area Community Coordinator a written statement detailing Student A's unwelcome sexual behavior on September 18 and September 19, 2005. That same day, the Director of Residence Life placed Student A on immediate disciplinary probation, changed the combination door lock on the Complainant's door, charged Student A for the room combination lock change, and required Student A to move from Kresge Hall to Barker Hall no later than 7:00 p.m. on September 20, 2005. Further, the Director of Residence Life prohibited Student A from contacting the Complainant and her roommate.

The College provided documentation that shows that College personnel removed Student A's dormitory room possessions from Kresge Hall on September 22,

2005. The College indicated that the two-day delay was the result of Student A's dilatory attitude, including his reluctance to move his belongings without the help of his roommate or another individual, and his inability to enter his new room because the College gave him the wrong access code for it.

The College conducted an investigation of the Complainant's charge and secured six written statements from students who had knowledge of interactions between the Complainant and Student A. The Associate Dean of Students met with Student A on September 20 and 22, 2005, to discuss the Complainant's accusations. Five of the statements were written on September 21, 2005, and one was written on September 22, 2005. None of the students claim to have witnessed the alleged incidents that occurred on September 18 and 19, 2005.

On September 22, 2005, the Associate Dean of Students determined that Student A violated the College Code of Conduct by committing the following offenses: (1.) theft; (2) unauthorized entry of college facilities; and (3) sexual harassment. The Associate Dean imposed the following sanctions on Student A:

- Disciplinary probation effective from the fall semester 2005 to December 16, 2005, with subsequent violations of College policy possibly resulting in suspension from the College;
- Restitution for the changes to the combination door lock on the Complainant's room;
- Requirement to schedule a meeting with the College Campus Counselor and to carry out any recommendations, education, or further actions;
- Completion of 40 hours of community service by December 16, 2005; and,
- Possible suspension should Student A violate the terms of this disciplinary probation or violate any College regulation during the period of disciplinary probation.

The Associate Dean informed Student A of these sanctions in a letter dated September 22, 2005.

Also on September 22, 2005, the Complainant filed a report with the Indianola Police Department describing Student A's unwelcome sexual conduct on September 18 and September 19, 2005. The Indianola Police Department charged Student A with burglary, administering a harmful substance, assault, third degree harassment and subsequently arrested him. On September 23, 2005, the police discharged him into the custody of his parents. The court set a preliminary hearing on the charges against Student A for October 10, 2005.

On September 23, 2005, the court issued an Order of Protection that prohibited Student A from both communicating with and being in the immediate vicinity of the Complainant. On September 26, 2005, the court modified the Order of Protection, to the extent not inconsistent with the prior protective order, as follows: “[Student A] may attend Simpson College, but he shall avoid contact with [the Complainant] and shall not speak to or in any way communicate with [the Complainant].”

On September 27, 2005, the Associate Dean met with the Complainant and advised her in person that on September 22, 2005, the College determined that Student A had committed theft, unauthorized entry, and sexual harassment. She further informed the Complainant of the disciplinary actions taken against Student A, which were also described in the Associate Dean’s September 22, 2005 letter to the Complainant.

On September 28, 2005, Student A was playing cards in his former room in Kresge Hall with three other male students. Student A was subsequently arrested for violating the Order of Protection. On September 29, 2005, Student A withdrew from the College.

In a letter to Student A dated October 4, 2005, the Associate Dean stated that, should Student A seek reenrollment in the College, the College would first conduct an administrative hearing on his violation of the Order of Protection. The letter also stated that Student A’s readmission to the College would be subject to the outcome of the hearing.

On October 18, 2005, the Vice President for Student Development responded to Student A’s inquiry regarding the discipline imposed on Student A. The Vice President reiterated the sanctions imposed on Student A on September 22, 2005, and informed the Complainant that Student A withdrew from the College on September 29, 2005 after “[he] was charged with violation of a protective order as a result of his presence in Kresge Hall on Wednesday evening September 28.” The Vice President also informed the Complainant that Student A is not eligible to re-enroll until such time that an administrative hearing on the violation of the order of protection is held.

Legal Standard

The Title IX regulation, at 34 C.F.R. § 106.31, 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 academic education program operated by a recipient that receives federal financial assistance.

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 recipient's program. Sexual harassment of students can, therefore, constitute a form of sex discrimination prohibited by Title IX. A hostile environment is created 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 recipient's program.

Title IX requires that once a recipient has notice of possible sexual harassment of students, the recipient should take immediate and appropriate steps to investigate or otherwise determine what occurred. If the recipient determines that sexual harassment occurred, it should take prompt and effective steps reasonably calculated to end any harassment, eliminate a hostile environment if one has been created, and prevent harassment from occurring again. The corrective action taken should be timely, age-appropriate and tailored to the specific situation. A series of escalating steps may be necessary if the initial steps are ineffective in stopping the harassment. A recipient also may be responsible for remedying the effects of the harassment on the student who was harassed.

The College determined that the alleged acts of unwelcome sexual touching and behavior in the instant case constituted sexual harassment. OCR's investigation focused on whether the College took immediate and appropriate steps to investigate or otherwise determine what occurred and took prompt and effective steps in response.

Analysis and Conclusion

The Complainant contends that the College did not promptly and effectively respond to her complaint of sexual harassment because the Community Advisor did not respond to her request for assistance on September 18, 2005, and because the College did not remove Student A from Kresge Hall until September 22, 2005, two days after it banned him from the residence hall.

With respect to the Complainant's assertion that the Community Advisor did not respond to her request for assistance on September 18, 2005, the Community Advisor stated that the Complainant did not make such a request to her on September 18 and that she did not witness the alleged incident between the Complainant and Student A on September 18. The Community Advisor indicated that the first time she was aware of the Complainant's allegations of sexual misconduct occurred when the Complainant and her roommate complained to her on September 19. The Complainant informed OCR that there were no witnesses other than the Community Advisor to the September 18 incident, and that no one witnessed or accompanied her when she sought help from the Community Advisor on September 18. OCR therefore concluded that the evidence is insufficient to establish that the Community Advisor had notice of the

Complainant's allegation of sexual harassment prior to the September 19 complaint to her.

Based on the above information, OCR also concluded that once the College had notice of the Complainant's sexual harassment complaint, it took immediate and appropriate steps to investigate the two incidents. The investigation began the day after she filed her complaint and was concluded within three days. During the investigation, the College took interim steps that were reasonably calculated to prevent the harassment of the Complainant by Student A. The College immediately disciplined Student A, changed the lock combination on Student A's door, ordered Student A to move out of the Complainant's residence hall and prohibited him from contacting the Complainant.

OCR further determined that following the completion of the investigation and the College's September 22 determination that sexual harassment had occurred, the College took prompt and effective steps reasonably calculated to end any harassment and prevent harassment from occurring again. The College placed Student A on disciplinary probation until December 16, 2005, ordered him to pay for changes to the Complainant's door lock, required him to meet with the College Campus Counselor and complete 40 hours of community services and indicated that suspension was possible if Student A violated the terms of the probation or any College regulation. When Student A shortly thereafter violated the judicial Order of Protection, was arrested and withdrew from the College, the College barred him from reenrollment pending a hearing on the violation of the protective order. The College informed the Complainant of the results of its investigation and the disciplinary actions taken against Student A promptly and appropriately.

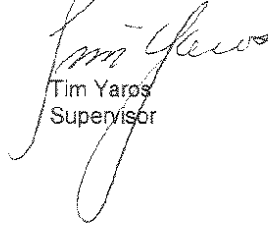
The Complainant objected that the College took two days to remove Student A from Kresge Hall. OCR determined that this two-day period occurred while the College's investigation was pending and prior to the College's determination that Student A had sexually harassed the Complainant. Further, the interim actions taken by the College, which included changing the Complainant's door combination, ordering Student A not to contact the Complainant, and ordering Student A to move out of the residence hall, were reasonably calculated to prevent further harassment of Student A. Further, the evidence indicates that the College escalated its response when Student A did not voluntarily move out of the hall by itself moving Student A's possessions out of the residence hall on September 22. Thus, while the Complainant was clearly uncomfortable that Student A remained in the residence hall for two additional days after being ordered to move out, OCR has concluded that the College's overall response to the Complainant's complaint of sexual harassment was prompt and effective.

For the foregoing reasons, OCR finds that there is insufficient evidence to conclude that the College violated Title IX with respect to this matter. Accordingly, we are closing this complaint effective the date of this letter.

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OCR appreciates the courtesy and cooperation shown by the College during the investigation of this complaint. If you have any questions about the issues addressed in this letter, please contact Ms. Catherine Martin or me at 312.886.8434.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim Yaros", is written over the typed name and title.

Tim Yaros
Supervisor

cc: Mr. Andrew Bracken
Attorney