



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS
SOUTHERN DIVISION, DALLAS OFFICE

February 10, 2005

Ref: 06042066

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Dear (b)(7)(C)

This letter is to notify you of the determination made by the U. S. Department of Education, Office for Civil Rights (OCR), Southern Division, Dallas Office, in the above-referenced complaint. In this complaint, which was received on April 28, 2004. You alleged that the Texas Vocational School (TVS), Victoria, Texas, operated in violation of Title IX of the Education Amendments of 1972 (Title IX). Specifically, OCR investigated the issue of whether the TVS subjected you to a sexually hostile environment by allowing employee on student harassment and student on student harassment to occur.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681 et seq., and its implementing regulation, 34 C.F.R. Part 106, which prohibits discrimination on the basis of sex in education programs and activities receiving Federal financial assistance from the U. S. Department of Education. The TVS is a recipient of Federal financial assistance from the U. S. Department of Education. Therefore, OCR has jurisdictional authority to process this complaint for resolution under Title IX.

Title IX and its implementing regulation prohibit discrimination based on sex. Sexual harassment of students is a form of prohibited sex discrimination. Hostile environment sexual harassment is sexually harassing conduct (which can include unwelcome sexual advances, requests for sexual favors, or other verbal, nonverbal, or physical conduct of a sexual nature) by an employee, by another student, or by a third party that is sufficiently severe, persistent or pervasive to limit a student's ability to participate in or receive benefits, services or opportunities in the institution's program. If OCR establishes that conduct of a sexual nature occurred, OCR examines additional factors to determine whether a sexually hostile environment exists.

Relevant factors may include the context, nature, location, and frequency of the harassment, and the ages and other characteristics of the subject and perpetrator of the harassment, and other incidents of sexual harassment at the institution. If OCR

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determines that a sexually hostile environment exists, OCR will then determine whether the institution took prompt and effective corrective action reasonably calculated to stop the harassment, prevent its recurrence and as appropriate, remedy its effects.

In order to reach a determination regarding the allegation in this complaint, OCR reviewed information and documentation provided by the complainant and TVS. Such information included pertinent school policies and procedures regarding grievances and documents regarding the circumstances surrounding the incidents involving the complainant. In addition, OCR conducted an on-site visit to investigate the complaint during the week of August 11, 2004, and interviewed the complainant, TVS officials and staff and student witnesses. OCR also reviewed documentation collected by local law enforcement officials. Provided below is the basis for OCR's determination regarding this complaint.

First, OCR assessed whether TVS had complied with procedural requirements of Title IX. The investigation disclosed that the TVS published a notice of nondiscrimination prohibiting discrimination based on sex. In addition, the TVS developed a policy prohibiting harassment, including harassment based on sex. Moreover, TVS has procedures in place for addressing student grievances pertaining to these matters. The policies and grievance procedure are disseminated to students during orientation and are included in the TVS student handbook.

You alleged to OCR that you were a victim of physical sexual harassment. Specifically, you asserted that on or around April 12, 2004, your welding instructor approached your welding booth, "popped" you on the buttocks and asked you if you needed any help. You alleged that you told him "no" and to not touch you again. The next day, you made a report to the Victoria County Sheriff's Department alleging assault by the instructor. You allege that you also reported the incident to the TVS director's office the next day. According to you, after filing the complaint with the TVS that the welding instructor touched you in the welding booth, you continued to attend class until May 5, 2004, when you withdrew from the course before the June 2004 course completion date.

Our investigation disclosed the TVS director began an investigation into the alleged incident on April 13, 2004, and interviewed several student witnesses to the incident who stated that the sexual harassment did not occur as alleged. The same student witnesses gave notarized statements to the local Sheriff's Department investigators and spoke with OCR regarding their view of the complainant's booth. The statements provided by the witnesses remained consistent in their description of the events and their position that no physical sexual harassment took place. As a result of the TVS director's investigation, the TVS determined that the sexual harassment did not occur as alleged by you.

OCR also interviewed the instructor and several student witnesses named by you regarding the alleged harassment on April 12, 2004. These interviews stated that the instructor approached your welding booth and asked if you needed any help but did not touch you. The witnesses informed OCR that that they saw the instructor standing at the entrance to the booth with his hands on the outside walls of the booth. Our investigation

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disclosed that these witnesses were standing directly behind your booth and were in a position to observe the instructor's actions. Their presence was confirmed by you. Further, the welding instructor stated to OCR that he did not inappropriately touch you. The investigation disclosed that the instructor had no previous history with student sexual harassment complaints at TVS, or at his previous position at another school.

In addition to the allegation of physical sexual harassment, you allege that during the period from November 2003 to April 2004, the welding instructor made multiple advances and sexual comments to you. You also alleged that other male students sexually harassed you on several occasions. You reported to OCR that degrading statements were written about you on the bathroom wall of the welding school. You also alleged that you made numerous complaints to the TVS staff not only about sexual harassment but also the quality of instruction and non-sexual harassing interactions with students and staff.

With regard to the allegations that the instructor had previously made harassing comments to you in the classroom, statements obtained by OCR from student witnesses did not corroborate that the instructor made sexually harassing comments or behaved inappropriately towards you. You had identified the assistant welding instructor as a witness that would confirm your account of the atmosphere in the classroom. Interviews with the assistant welding instructor showed that he was aware you and other students in the class "did not get along," and that you had made complaints to the TVS against the welding instructor and other students in the class, although he did not know the subject matter of the complaints. However, the assistant welding instructor stated that he did not witness any inappropriate behavior of a sexual nature on the part of the welding instructor or other students towards you. OCR's investigation showed that you had filed complaints about the welding instructor for "singling you out" in classroom discussions by praising your work, which had made you uncomfortable. Documentation and interviews revealed that in response to these complaints, the TVS director talked with the instructor about his comments (i.e. praising your work in front of other students which made you uncomfortable), and they were stopped.

OCR's investigation showed that the interactions with other students in the classroom that you complained about to the administration did not involve conduct of a sexual nature. You reported that there were comments written about her in a unisex bathroom but there was no evidence that written graffiti in the bathroom was sexual in nature. The TVS director had the bathroom wall repainted as soon as written comments about you were reported. Neither you, the students, nor TVS personnel interviewed by OCR could recall what had been written on the bathroom wall regarding the complainant. The TVS director acknowledged that you "did not get along" with other students in the class, and that complaints were made both by you and about you by other students. More specifically, the investigation showed that disagreements arose between you, classmates,

and instructors over you borrowing money, not following school rules, and your use of profanity. The information reviewed by OCR showed that in response, the TVS director addressed the class and discussed the school's policies and procedures about student behavior.

Finally, OCR investigated whether there was a history of sexual harassment complaints at TVS. In interviews with OCR, TVS staff asserted that there had been no previous reports of sexual harassment at the school, although other women had been enrolled in the welding school, as well as being the majority of the students enrolled in the paralegal and business courses offered there. A female student currently enrolled in the welding program reported to OCR that she felt that the environment was "very good" for women at TVS and said that she had not experienced any harassment. She further stated that she knew she could go to the TVS administration with harassment complaints, and that she would feel comfortable doing so.

Based on interviews with you and the alleged harasser as well as a review of witness statements and TVS documentation, OCR determined that the issue of whether the TVS subjected a student to a sexually hostile environment by allowing sexually harassing conduct to occur without effective corrective action, was not supported by OCR's investigation. Moreover, there was insufficient information to establish that the conduct of a sexual nature occurred as alleged. Further, OCR determined that the TVS took prompt and effective action to investigate and address your allegations of sexual harassment. Therefore, OCR has determined that there is insufficient evidence to support a conclusion of noncompliance with Title IX with regard to the issue investigated.

This letter is not intended, nor should it be construed to cover any other issues that may exist and are not specifically discussed herein. Therefore, OCR is closing the above referenced complaint as of the date of this letter.

If you have questions about OCR's determination in your case or wish to discuss it further, please contact me at 214/880-2459 or Ms. Sara Koehn, the investigator assigned to the complaint, at 214/880-9478. If following this conversation, you still have concerns, you may send a written request for reconsideration to the Dallas Office Director, Mr. Taylor D. August, at the address indicated above, within 60 days of the date of this letter. Please note that while you are encouraged to do so, having a discussion with me about the OCR determination is not a prerequisite to filing a request for reconsideration with the Office Director and it does not stop the running of the 60-day timeline. In requesting reconsideration, be as specific as possible. Please focus on factual or legal concerns that you believe may change the determination. You should explain why you believe the determination was incorrect, i.e., why the factual information was incomplete, the analysis of the facts was incorrect, the legal standard was not applied correctly, and/or the incorrect legal standard was applied. The Director will respond in writing.

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Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions regarding this letter, please contact me at 214/880-2459 or Ms. Sara Koehn, the investigator assigned to the complaint, at 214/880-9478.

Sincerely,



John F. Stephens
Compliance Team Leader
Southern Division-Dallas Office