



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS
SOUTHERN DIVISION, DALLAS OFFICE

June 9, 2006

Reference: 06052084

Dr. Margaret Montgomery-Richards, Chancellor
Louisiana Technical College
150 3rd Street
Baton Rouge, LA 70801

Dear Dr. Montgomery-Richards:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), Southern Division, Dallas Office, completed its investigation of a complaint that was filed against the Louisiana Technical College (College or LTC), Lafayette Campus (Campus), Lafayette, Louisiana, on April 22, 2005. The complainant alleged that the College discriminated against her on the basis of sex. Specifically, she alleged the College did the following:

1. failed to take prompt and effective action after she informed one of her professors that she was being subjected to alleged sexual harassment by a male instructor from January 2004 to February 2005; and
2. failed to provide a prompt and equitable resolution to her internal grievance complaint of sexual harassment when it did not give her a final, written determination of her grievance.

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 Department. The College 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.

OCR investigated the issues of whether the College, when notified of alleged sexual harassment, failed to take prompt and effective action responsive to the alleged harassment and whether the College failed to adopt and publish grievance procedures that provide for the prompt and equitable resolution of complainants alleging sexual harassment.

In reaching a determination in this case, OCR conducted interviews and reviewed information and documentation provided by the complainant and the College. Based on a review of this information, with regard to both issues, OCR determined that there is insufficient evidence to support a conclusion of noncompliance with regard to whether the College took prompt and

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effective action in response to the complainant's allegation of sexual harassment. However, OCR has also determined that there is sufficient evidence to support a conclusion of noncompliance with regard to whether the College has adopted and published grievance procedures providing for the prompt and equitable resolution of sex discrimination complaints, including complaints of sexual harassment. The bases for these determinations are set forth below.

Legal Standards

Under Title IX, colleges that receive Department funding are responsible for providing students with a nondiscriminatory educational environment. Sexual harassment of a student can result in the denial or limitation, on the basis of sex, of the student's ability to participate in or receive benefits, services, or opportunities from the school's program, in violation of Title IX and the Department's Title IX regulations found at 34 C.F.R. §106.31. OCR generally defines sexual harassment as unwelcome conduct of a sexual nature that has the effect of interfering with, denying, or limiting, on the basis of sex, a student's ability to participate in or to benefit from any education program or activity.

If an employee who is acting (or who reasonably appears to be acting) in the context of carrying out these responsibilities over students engages in sexual harassment (i.e., harassment that is carried out during an employee's performance of his/her responsibilities in relation to students, including teaching, counseling, supervising, advising, and transporting students) 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. This is true whether or not the recipient has "notice" of the harassment (i.e., a responsible school employee actually knew or, in the exercise of reasonable care, should have known about the harassment). A responsible employee would include any employee who has the authority to take action to redress the harassment, who has the duty to report to appropriate school officials sexual harassment or any other misconduct by students or employees, or an individual who a student could reasonably believe has this authority or responsibility.

Once a college has notice of possible sexual harassment of students, it should take immediate and appropriate steps to investigate or otherwise determine what occurred and 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. These steps are the college's responsibility whether or not the student who was harassed makes a complaint or otherwise asks the college to take action. A college's response to a complaint of sexual harassment is adequate if it includes a thorough and objective investigation, prompt and effective action to stop any sexual harassment and prevent it from recurring and, if appropriate, a remedy for any discriminatory effects caused by the harassment.

The Title IX regulation further provide that recipients are required to adopt and publish grievance procedures providing for the prompt and equitable resolution of student and employee complaints alleging any form of sex discrimination prohibited by Title IX and the regulations. The purpose of these procedural requirements is to ensure that recipients appropriately identify and resolve complaints of sex discrimination, including sexual harassment, in a timely and effective fashion. While Title IX does not require a school to adopt a policy specifically

prohibiting sexual harassment or to provide separate grievance procedures for sexual harassment complaints, its nondiscrimination policy and grievance procedures must provide effective means for preventing and responding to sexual harassment. In addition, the regulation provides that a recipient must designate at least one employee to coordinate its efforts to comply with and carry out its Title IX responsibilities, and a recipient must notify all of its students and employees of the name, office address, and telephone number of the employee or employees so designated.

OCR addressed the issues raised in this complaint by considering whether: (1) the College has a disseminated policy prohibiting sex discrimination under Title IX and effective grievance procedures; (2) the College appropriately investigated or otherwise responded to allegations of sexual harassment; and (3) the College has taken immediate and effective corrective action responsive to the harassment.

Policies and Procedures

The Lafayette Campus of the Louisiana Technical College (College) is one of eight college campuses within District 4, the Greater Acadiana District. There are eight Districts, with over forty campuses statewide, making up the Louisiana Technical College system. The evidence showed that the College has adopted and published in its Campus Catalog (Catalog) a nondiscrimination notice and policy prohibiting harassment based on race, color, religion, national origin, gender, age or disability. The Catalog is available on-line and provided to all students at the beginning of the school year both in hard copy as well as on compact disc. The Human Resource Policy Regarding Harassment provides a definition of harassment and sexual harassment, and procedures for pursuing a complaint in an informal or formal process. These procedure states that a student is to notify and discuss an allegation of sexual harassment with the "Coordinator of Harassment," who is the Title IX Coordinator. A formal, written complaint is to be submitted to the Title IX Coordinator, who will "present the complaint to the appropriate administrator." This administrator is to conduct an inquiry, including calling witnesses and gathering information to make a determination as to the merits of the allegation. Either party can appeal to the College's Chancellor, the Human Resources Director, or the governing Board if the results are not satisfactory to them.

The Catalog also contains another grievance procedure, the Student Grievance Procedure. The formal procedures of the Human Resource Policy Regarding Harassment and the Student Grievance Procedure are different and provide differing rights, responsibilities and expectations for those who may use them. The Student Grievance Procedure gives the definition of a grievance as "... a student complaint about the conditions or policies within a technical college or a complaint about the actions of employees, students, or instructors within the college that affect the college environment for the aggrieved student." This grievance procedure provides that all grievances are to be filed within 30 days of when the complainant becomes aware of the cause of the grievance, allows for an informal process by which the complainant may attempt to resolve the problem with the other person or his/her supervisor or instructor, and allows the filing of a formal complaint without any condition that the informal process first be followed.

Unlike the formal procedure outlined under the Human Resource Policy Regarding Harassment, the formal grievance procedure under the Student Grievance Procedure states (1) the grievance is to be filed with the campus dean of the college (not the Coordinator for Harassment); (2) the campus dean

will appoint a committee of 2 students and 4 faculty to investigate (while the harassment procedure provides that the Coordinator will give the complaint to the "appropriate administrator" who will investigate); (3) within 3 days of the complaint, letters will be sent to the parties and witnesses will be called, including notice of the date and time of the hearing and notice of the right to call witnesses; (4) that the day after the hearing, the committee will submit its findings and recommendations to the campus dean; (5) the campus dean will notify the parties in writing of the decision within 10 days of receiving the committee's report; and (6) the right of appeal. In addition, the Catalog also states that students should see the Title IX Coordinator for the grievance procedures for Title IX, Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973 complaints, thereby indicating that there is yet another grievance procedure to be used for Title IX complaints.

Based on the foregoing evidence, OCR determined that the College has a notice of nondiscrimination on the basis of sex in its Catalog that is given to students at the beginning of the school year, has a published sexual harassment policy and apparently two grievance procedures that may be used to address allegations of discrimination on the basis of sex. However, as will be shown later, Lafayette Campus personnel indicated that there is a lack of clarity with respect to the implementation of the grievance procedures.

Notice of the Alleged Sexual Harassment

The investigation revealed that the complainant began attending the College in January 2004. The complainant informed OCR that it was shortly after starting school that she began experiencing harassing conduct, some of a sexual nature, by one of the College's Medical Laboratory Technician instructors (instructor). This instructor was not, and had never been, one of her instructors while attending the College. The complainant told OCR that although the instructor's conduct was, at first, "not really bad," she did eventually inform one of her professors of the conduct and was told by the professor that she would take care of it. The complainant stated that as the instructor's harassing conduct continued in the fall of 2004, she again spoke with her professor who told her that if the conduct kept up, the complainant should notify someone in the administration office. In the spring of 2005, the complainant again spoke with this professor, as well as another of her professors, regarding the instructor's conduct. The complainant told OCR that in the spring of 2005, the instructor was following her, waiting outside the women's restroom until she came out, and would wait around in the morning to see her arrive on campus. In addition, he made comments to her, before other students, that she was his wife and they had children together. She also said that while walking to her car, he approached her and put his arm around her and touched her buttocks. He also was making comment to her such as her "a** looks good in them jeans," commenting on how her breasts look in her t-shirt, and telling the first professor that all he wanted "was [her] cookie" which the complainant claims was referring to her vaginal area. In her February 2005 grievance, however, while she asserted similar verbal comments by the instructor, including the instructor saying that he was the man for her and could take care of her, telling her that he could pay for her books because he does that for friends and he wanted to be her friend; and telling her that he wanted to "butter [her] biscuit."

The second professor, with whom the complainant spoke for the first time in February 2005, immediately went to the Interim Assistant Dean's office on February 15, 2005, with the

information and was directed to report it to the campus' Title IX Coordinator, which she did. Shortly thereafter, on February 16, 2005, the complainant discussed the situation with the Title IX Coordinator, and filed a written grievance of sexual harassment against the instructor five business days later on February 23, 2005.

Although the complainant alleged that she notified the College of the sexual harassment, by speaking with one of her professors the spring of 2004, and the College took no action at that time, OCR found no evidence of such notice. Rather, the evidence showed that actual notice of alleged sexual harassment given to the College occurred the fall of 2004. The complainant's February 2005 formal complaint filed with the College claimed the harassment started in the fall of 2004 (not spring of 2004). And the committee that heard the complainant's grievance on March 9th did not record any evidence or assertions being made during its hearing of any harassment occurring before the fall of 2004. The complainant's formal complaint also stated that her professor told her that she would "take care of it" not in the spring of 2004, but rather the fall. This professor admitted to the hearing committee that she made this statement to the complainant. The College no longer employs this professor, who left the College the summer of 2005.

Action Taken

The evidence showed that after the complainant filed her grievance on February 23, 2005, there was some initial confusion on the part of the Lafayette Campus as to the handling of the written, formal complaint. Rather than presenting the complaint to the appropriate administrator to conduct an inquiry as required by the Human Resource Policy Regarding harassment grievance procedures, or following the Student Grievance Procedure, which would involve establishing a committee, calling the witnesses and holding a hearing at the campus level, the complaint was forwarded it to the District 4 Vice Chancellor/Provost, who in turn forwarded it to the LTC central office's Human Resource Department.

The investigation revealed that there is a lack of clarity about roles and responsibilities regarding the processing of allegations of sexual harassment. For example, the Title IX Coordinator told OCR that the procedure that the campus follows is old, and confusing. She said the sexual harassment complaint procedure is a "grey area," and they are "not sure what to do," step-by-step, when they get a sexual harassment complaint. The Interim Assistant Dean told OCR that while the policies are there, i.e. anti-harassment and sexual harassment policies, the procedures to follow in handling such complaints are unclear, are "fuzzy," "not clear." OCR also determined that while there was document from a January 24, 2005 Technical Council Greater Acadiana District meeting in which it is stated, "Sexual Harassment Complaints – Direct to LTC Central Office HR Department AND Notify District Office", according to the College's Human Resources Director (HR Director), the procedure is to investigate the grievance at the local campus level.

Following a conversation between the HR Director and the District 4's Human Resources Manager (HR Manager), the complaint was returned to the Lafayette Campus on March 3rd, at which time the Title IX Coordinator formed a committee and scheduled a hearing on the complaint for March 9th (ten business days from when the complaint was filed, and four business days from when the local campus was told to investigate the complaint at the campus level). She sent certified letters

to the complainant and instructor (informing them of their right to call witnesses and have an attorney), and letters to the witnesses and committee members, notifying them of the complaint and hearing date. The evidence showed that on March 7, 2005, prior to the committee hearing, the instructor was placed on forced annual leave and was removed and barred from campus, pending the hearing and committee findings.

On March 9, 2005, the committee heard the complainant's formal grievance, including testimony from the complainant and instructor, as well as witnesses. The witnesses included the two professors to whom the complainant had given notice of the alleged harassment, and two student witnesses who spoke of the instructor's conduct toward the complainant. Following the hearing, on March 10, 2005, the committee issued its findings to the District 4 Vice Chancellor/Provost, finding that sexual harassment on the part of the instructor toward the complainant had occurred. The evidence showed that the Vice Chancellor/Provost determined not to accept the committee's findings, and instead ordered that the instructor be allowed to come back to campus and resume his teaching duties. The instructor returned to campus, but was told that he was confined to his classroom, i.e., to his area in the building where he taught (he taught in a different department and area of the school than where the complainant attended classes). The instructor was terminated in July 2005 (on unrelated grounds), and is no longer employed by the College.

The evidence also showed that on April 15, 2005, the District 4 Vice Chancellor/Provost and Lafayette Campus Interim Assistant Dean wrote a letter to the complainant and instructor, notifying them that the information gathered by the grievance committee during the March 9, 2005 hearing was being forwarded to the LTC Chancellor's office "for further review." The letter also instructed the professor to "refrain from making any contact with [her]" and he asked the complainant that she do the same. The evidence is unclear, however, whether this letter, along with the committee's findings, were in fact sent to the LTC Chancellor's office. The Vice Chancellor/Provost told OCR that he did not create the letter, but only signed it, and you informed OCR that you never saw the Vice Chancellor/Provost's April 15th letter. The April 15th letter was the last communication to the complainant regarding her grievance.

According to the complainant, the instructor's harassment ended when she filed her grievance. After the March 9, 2005 hearing on her grievance, she did not ever see him again. The complainant further told OCR that while she believed her grades were impacted during the time the instructor was following her and making comments toward her, after February 2005 when she met with the Title IX Coordinator and filed her written complaint, her grades improved and there was no negative or long-term adverse impact on her grades or education.

Based on the foregoing, OCR determined that following notice, and the filing of a written grievance, the Lafayette Campus took prompt and effecting action, holding a hearing on March 9th that resulted in the instructor no longer having any contact with the complainant which thereby ended any further allegedly sexually harassing conduct. In addition, despite not receiving a written determination letter from you, the Chancellor, following the Vice Chancellor/Provost's April 15, 2005 letter, the complainant nevertheless was given notice of the committee's findings, and the directive to the instructor that he was to have no further contact with her. OCR also determined that although the College has adopted, published, and disseminated grievance procedures to address complaints of sex discrimination, including sexual

harassment, LTC officials, including the person designated by the College to coordinate its efforts to comply with Title IX, acknowledged that the procedures lack clarity and do not provide clear guidance to students or administrators of the procedures to be utilized to resolve sexual harassment complaints.

Accordingly, OCR has determined that there is insufficient evidence to support a conclusion of noncompliance with regard to whether LTC took prompt and effective action in response to the complainant's allegation of sexual harassment. However, OCR has determined that there is sufficient evidence to support a conclusion of noncompliance with regard to whether LTC has adopted and published grievance procedures providing for the prompt and equitable resolution of sex discrimination complaints, including complaints of sexual harassment.

Other Issues

During the course of OCR's investigation, OCR determined that while the Title IX Coordinator's name and title, and the department in which she may be located, was contained in the Catalog, it did not provide an office address or telephone number as is required by Title IX implementing regulation.

In addition, OCR determined that there was no information in the Catalog to indicate that the College has grievance procedures pursuant to Title II of the Americans with Disabilities Act of 1990 or the Age Discrimination Act of 1975. Both Title II and the Age Act require the College to adopt and publish a grievance procedure providing for prompt and equitable resolution of complaints alleging any action prohibited by either Title II or the Age Act, and a designation of at least one employee to coordinate its efforts to comply with these laws, providing the designee's name, office address, and telephone number.

As indicated above, OCR identified some compliance concerns as a result of its investigation. The College has agreed to address those concerns in the enclosed Resolution Agreement (Agreement), dated May 25, 2006. OCR has determined that the compliance concerns will be satisfactorily resolved upon full implementation of the Agreement. The dates for implementation of specific actions required are detailed in the Agreement. OCR will monitor the implementation of the Agreement. Please be advised that if the College fails to adhere to the actions outlined in this Agreement, OCR will immediately resume its compliance efforts.

This letter is not intended, nor should it be construed, to cover other civil rights issues that may exist, but are not included herein.

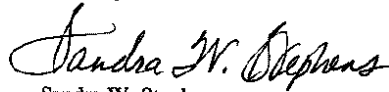
Under OCR procedures we are obligated to advise the complainant and institution against which a complaint is filed that intimidation or retaliation against a complainant is prohibited by regulations enforced by this agency. Specifically, the regulations enforced by OCR, directly or by reference, state that no recipient or other person shall intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with any right or privilege secured by regulations enforced by OCR or because one has made a complaint, testified, assisted or participated in any manner in a investigation, proceedings or hearing held in connection with a complaint.

Page 8 of 8 – Dr. Margaret Montgomery-Richards, Chancellor

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.

Thank you for the assistance your staff provided to OCR in the course of this investigation. If you have any questions, please do not hesitate to call me at 214-661-9600, or Mr. Tom Stack at 214-661-9650.

Sincerely,

A handwritten signature in cursive script that reads "Sandra W. Stephens".

Sandra W. Stephens
Team Leader

Enclosure: As Stated

RESOLUTION AGREEMENT

Louisiana Technical College - Lafayette Campus
OCR Complaint No. 06052084

Louisiana Technical College voluntarily submits this Resolution Agreement to the U.S. Department of Education, Office for Civil Rights (OCR), Southern Division, Dallas Office. The College commits to take the actions set forth below to ensure adherence to the requirements of 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 (2005); Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. §794 (amended 1992), and its implementing regulation at, 34 C.F.R. Part 104 (2005); Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §12132, and its implementing regulation at 28 C.F.R. Part 35 (2005); and the Age Discrimination Act of 1975 (Age Discrimination Act), 42 U.S.C. §6101 et seq., and its implementing regulation at, 34 C.F.R. Part 110 (2005).

Action Items:

1. By August 21, 2006, the Louisiana Technical College will revise the Lafayette Campus Student Catalog to clarify and/or adopt and publish the procedures to be used to address allegations of discrimination under Title IX (including but not limited to sexual harassment), Section 504, Title II and the Age Discrimination Act. The grievance procedure(s) will provide for the prompt and equitable resolution of complaints alleging any action prohibited by these statutes, and will address, at a minimum, the following:
 - a. Notice to students, parents of elementary and secondary students, and employees of the procedure, including where complaints may be filed;
 - b. Application of the procedure to complaints alleging discrimination and/or harassment carried out by employees, other students, or third parties;
 - c. Adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence;
 - d. Designated and reasonably prompt timeframes for the major stages of the complaint process;
 - e. Notice to the parties of the outcome of the complaint; and
 - f. An assurance that the school will take steps to prevent recurrence of any discrimination and/or harassment and to correct its discriminatory effects on the complainant and others, if appropriate.
2. By August 21, 2006, the Louisiana Technical College will notify all Lafayette Campus students, instructors, staff and administrators, in writing, of the name, office address, and telephone number of the responsible Campus employee designated to coordinate the Lafayette Campus' efforts to comply with, and carry out, its Title IX responsibilities.
3. By August 21, 2006, the Lafayette Campus will amend its Student Catalog to include the name, office address and telephone number of the responsible Lafayette Campus employee identified in item 3 above.

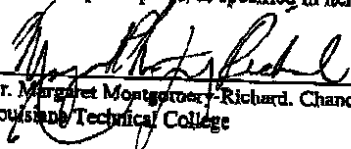
Page 2 of 2 - Resolution Agreement - Louisiana Technical College, 06052084

4. By September 1, 2006, the Louisiana Technical College will provide in-service training to all Lafayette Campus instructors, and Campus and District 4 staff and administration officials regarding the Louisiana Technical College and local campus' responsibilities and obligation to comply with the regulations implementing Title IX regarding sexual discrimination, including sexual harassment. This training will include instruction on a college employee's responsibility of reporting to appropriate campus, district, and/or Louisiana Technical College officials any knowledge of sexual discrimination and/or harassment occurring on campus or otherwise involving a Louisiana Technical College student; as well as the procedures to be followed in reporting, investigating, and issuing a final determination on a grievance of sexual discrimination or harassment.

Reporting Requirements:

By September 8, 2006, the Louisiana Technical College will submit to OCR:

1. A copy of its revised Lafayette Campus Student Catalog in which it has clarified and/or adopted and published the procedures to be used to address allegations of discrimination under Title IX (including but not limited to sexual harassment), Section 504, Title II and Age Discrimination Act grievances, and included the name, office address and telephone number of the responsible Lafayette Campus employee identified in items 1, 2 and 3 above.
2. Documentation evidencing that it has disseminated to all Lafayette Campus students, instructors, staff and administrators written notice of the name, office address, and telephone number of the responsible Campus employee designated to coordinate the Campus' efforts to comply with, and carry out, its Title IX responsibilities, as specified in item 2 above.
3. The name(s) and title(s) of the in-service trainer(s), the date of the in-service training, the materials used, and the sign-in sheet indicating the names and titles of participants, as specified in item 4 above.



Dr. Margaret Montgomery-Richard, Chancellor
Louisiana Technical College

5/24/06

Date