



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS - REGION VII

January 23, 2007

Dr. Carol E. Ballantyne, President
Garden City Community College
801 Campus Drive
Garden City, Kansas 67846-63333

Ref: OCR Docket #07062032

Dear Dr. Ballantyne:

On January 30, 2006, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received a complaint alleging discrimination on the bases of sex and retaliation by the Garden City Community College (College), Garden City, Kansas. Specifically, the complainant alleged:

1. the College's track coach and an assistant track coach sexually harassed the complainant from approximately February 2005 to April 2005; and
2. in retaliation for reporting the sexual harassment, the track coach revoked the complainant's athletic scholarship for the 2005-06 academic year.

After investigating both allegations, OCR has determined with regard to allegation 1, the evidence supports OCR entering into a Resolution Agreement (Agreement) with the College. With regard to allegation 2, OCR has determined the findings in the investigation do not support a conclusion that the College violated any of the laws OCR enforces. Our investigation and determination are explained in this letter.

OCR is responsible for enforcing:

- Title IX of the Education Amendments of 1972 (Title IX), 20 United States Code (U.S.C.) § 1681, and its implementing regulation, 34 Code of Federal Regulations (C.F.R.) Part 106. Title IX prohibits discrimination on the basis of sex in any education program or activity operated by a recipient of Federal financial assistance (FFA).
- Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d, and its implementing regulation, 34 C.F.R. Part 100. The Title VI regulation at 34 C.F.R. § 100.7(e) prohibits recipients of FFA from intimidating or retaliating against individuals who engage in an activity protected under Title VI,

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including complaining of discrimination or harassment. The Title VI regulation prohibiting retaliation is incorporated, by reference, into the regulation implementing Title IX at 34 C.F.R. § 106.71.

As a recipient of FFA from the Department, the College is subject to these laws.

In reaching a determination regarding the complaint allegations, OCR interviewed the complainant on February 6, 7, 13, and July 19, 2006. We also interviewed College administrators and staff, reviewed and analyzed documents provided by the complainant and the College.

Allegation 1 – Sexual Harassment Incident

The complainant alleged the College's track coach (Coach) and an assistant coach (Assistant) sexually harassed her from approximately February 2005 to April 2005. The complainant further explained she does not believe the College followed any type of formal grievance procedure in responding to her complaint of sexual harassment. She stated she attempted to file an internal grievance regarding her dissatisfaction with the College's handling of her sexual harassment complaint by writing letters to the recipient. The complainant stated she still has not received any definite information regarding the investigation of her initial sexual harassment complaint or the outcome of her internal grievance.

Legal Standard

Title IX and its implementing regulation at 34 C.F.R. § 106.31(a) states 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, extracurricular, ... or other education program or activity....”

Sexual harassment is a form of sex discrimination that includes 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 education program. A student may be sexually harassed by a recipient's employee, another student or a non-employee third party. The education program or activity of a recipient includes all of the recipient's operations.¹ Additionally, the regulation implementing Title IX at 34 C.F.R. § 106.8(b) requires a recipient to adopt and publish grievance procedures that provide for the prompt and equitable resolution of complaints alleging any action prohibited by Title IX. Under

¹ Revised OCR Sexual Harassment Guidance (January 2001), posted on the OCR website at <http://www.ed.gov/about/offices/list/ocr/docs/shguide.html>.

34 C.F.R. § 106.8(a), recipients are also required to designate at least one employee to coordinate its efforts to comply with the Title IX regulations, including any investigation of sex discrimination complaints, and to notify students and employees of the name, office address and telephone number of the designated employee.

Furthermore, Title IX incorporates by reference, the Title VI regulation at 34 C.F.R. § 100.6(b), which requires recipients to maintain sufficient records to enable the Department to determine whether recipients have complied, or are complying with, the regulations.

OCR Findings

OCR's investigation established the following:

- The data submitted by the College demonstrated the College did not have a published grievance procedure, which provided for the prompt and equitable resolution of complaints alleging actions prohibited by Title IX.
- The data submitted by the College also indicated the College had not designated a Title IX coordinator and so there was no notification to students and employees of the name, office address and telephone number of the designated employee.
- The complainant alleged during the Spring 2005 outdoor track season, the Coach and the Assistant engaged in the following behaviors, which she considered sexual harassment:
 1. the Coach told the complainant she had a nice body on several occasions;
 2. when the complainant told the Coach she wore underwear beneath her "speed suit" because the suit was transparent, the Coach responded, "That is why I gave it to you";
 3. on the way to Houston, Texas, for a track meet, the bus stopped for gas. The Coach touched each player on the shoulder as they exited the bus. When the complainant exited, the Coach rubbed his crotch with his hand, smiled and then touched the complainant on the face;
 4. during the meet in Houston, the Assistant called the complainant's room and asked if she had any lotion. The complainant took the lotion to his room. The Assistant told the complainant that he had the room to himself and she was welcome to come back later and sleep with him;

5. at a meet in Wichita, Kansas, the Coach told the complainant to change out of shorts to sweat pants because he did not want anybody looking at “his girl.”
- The complainant stated in her interview with OCR that she first reported the sexual harassment to the Director of Student Services Offices around middle to late April 2005. Later that same day, she also reported the sexual harassment to the Dean of Student Services. The Dean of Student Services then told her to report her concerns to the Athletic Director. The Athletic Director questioned her as to why she waited so long to complain about the sexual harassment and then he told her to report it to the Human Resources Director. The complainant stated she then sent a message to the Human Resources Director and was subsequently contacted by her but the complainant was not certain of the date she had left this message for the Human Resources Director. After the complainant met with the Human Resources Director, they went to the family crisis center to meet with the Family Crisis Counselor. The complainant stated no one ever informed her of any College grievance procedure regarding sexual harassment. While the complainant stated she was sent from one person to the next to report the sexual harassment, she acknowledged the sexual harassment stopped after she reported it to the College.
 - The College’s Human Resources Director² stated in her interview with OCR that she was responsible for investigating complaints of sexual harassment that involve employees of the College. She stated she first became aware of the complainant’s sexual harassment allegation when the Athletic Director brought it to her attention, on or around Friday, May 6, 2005. On May 11, 2005, the Human Resources Director received a copy of a statement the complainant provided to the Family Crisis Counselor. The Human Resources Director stated she used this as the basis for her investigation. She stated she listened to the complainant’s concerns, and then tried to contact people on campus. She interviewed female coaches and also tried to talk to members of the track team. She stated it was difficult to contact these students because she received the sexual harassment report at the end of the school year. Some students were at a national track meet and others were taking finals and preparing for summer vacation.

² The title of Human Resources Director refers to the individual who had this position at the time the College was notified of the sexual harassment complaint. Prior to the initiation of this investigation, the Human Resources Director, while still employed by the College, was no longer the Human Resources Director.

The Human Resources Director stated she could not substantiate the remarks and actions alleged by the complainant but she did learn from some of the coaches that the Coach and Assistant exhibited a pattern of making inappropriate remarks when addressing other coaches and athletes. She discussed her findings with you, as President of the College and disciplinary action was taken against the Coach and Assistant.

The Human Resources Director was unable to provide OCR a copy of a written report regarding her investigation. There were no records of her investigation other than some of her handwritten notes, which were not dated, and did not identify the interviewee. Because they were handwritten, the notes were difficult to decipher. While the Human Resources Director acknowledged she was unable to interview all potential witnesses, she could not provide any documentation as to her attempted contacts nor was she able to explain why these witnesses were not interviewed. The Human Resources Director also acknowledged she did not investigate the complainant's additional allegation the coach retaliated against her for complaining about sexual harassment by taking away her scholarship. The Human Resources Director stated she informed the complainant that she did not have authority over scholarship issues.

- The College's Family Crisis Counselor (who counseled the complainant) informed OCR the complainant did not appear to suffer any long term effects from the alleged sexual harassment and did not seek any subsequent counseling.

Analysis and Conclusion

Consistent with the legal standards outlined above, to support a conclusion a recipient discriminated against a student by subjecting a student to, or permitting a student to be subjected to, sexual harassment, the evidence obtained during an investigation must be sufficient to indicate 1) the student was subjected to harassing conduct because of her sex, and the harassment was sufficiently severe, pervasive or persistent to create a hostile environment; 2) the recipient received actual or constructive notice of the sexual harassment; and 3) the recipient failed to take prompt action to end the sexual harassment.

Based upon the complainant's statement that there were no further incidents of sexual harassment after she reported the harassment to the College and the fact that the student is no longer attending the College, OCR finds the hostile environment sexual harassment issue has been resolved.

OCR next examined whether the recipient's response to the reported sexual harassment met the procedural requirements under Title IX since Title IX requires a

recipient to have a procedure in place for providing prompt and equitable resolution of a complaint of discrimination on the basis of sex, regardless of whether there is a finding that the sexual harassment has occurred.³ OCR finds the College could not provide any documentation to demonstrate it had such a procedure in place. The College also could not provide documentation to demonstrate that at least one employee had been designated as the Title IX coordinator and had notified students and employees of the name, office address and telephone number of the designated employee. Additionally, OCR finds the College could not provide sufficient documentation for OCR to determine whether the College had effectively investigated the sexual harassment allegation.

The College entered into discussions regarding the areas of noncompliance identified above. As a result of these discussions, the College agreed to take the remedial actions set forth in the enclosed Agreement to bring the College into compliance. OCR concludes that upon full implementation of the commitments set out in the Agreement, the College will be in compliance with Title IX procedural requirements. Therefore, OCR considers this complaint allegation resolved effective the date of this letter. OCR will monitor the University's implementation of the enclosed Agreement. Failure to satisfy the terms of the Agreement will result in further action by OCR.

Allegation 2 – Retaliation Based on Reporting Sexual Harassment

The complainant also alleged the Coach revoked her athletic scholarship for the 2005-06 academic year in retaliation for her reports of sexual harassment to College officials.

Legal Standard

When OCR investigates a retaliation allegation, it uses a four part *prima facie* analysis. A *prima facie* case of retaliation is established by showing that: (1) an individual participated in a protected activity; (2) the recipient was aware of the protected activity; (3) the recipient took adverse action against the individual contemporaneously with or subsequent to the individual's participation in the protected activity; and (4) there was an inferable causal relationship between the adverse action and the individual's participation in the protected activity. Once OCR has established a *prima facie* case of retaliation, the recipient must articulate a legitimate, non-retaliatory reason for its action. Then OCR analyzes the evidence to determine whether the recipient's proffered reasons are a pretext for retaliation.

³ OCR's Revised Sexual Harassment Guidance, January 2001, states that recipients are required to have in place, a grievance procedure providing for prompt and equitable resolution of complaints of discrimination on the basis of sex. A recipient violates this provision, if it does not have such a procedure in place, regardless of whether sexual harassment has occurred.

OCR Findings

- The complainant stated in her interview with OCR she was not certain when she first reported the sexual harassment to the College. She thought it was middle or late April 2005 when she made her report. The complainant also stated the Coach informed her on May 2, 2005, that he was pulling her scholarship because of “all the stuff she said.” The complainant stated she interpreted this as a reference to her reporting his drinking and sexual harassment
- The Coach stated in his interview with OCR that the complainant’s track performance was not good and she would not respond to his attempts to coach her. Instead, she would tell him what she wanted to do and also informed him that he was a bad coach. The Coach stated that despite the complainant’s poor performance on the track team, he saw some potential in her as a cross-country runner. He stated he spoke with the complainant in early April 2005, about running cross country but the complainant told him she did not want to do this. The Coach stated he informed the complainant she was off the track team on May 2, 2005. Shortly after informing the complainant of his decision, he heard about the complainant’s allegation of sexual harassment from the Athletic Director. The Coach stated he was not aware of any sexual harassment allegation at the time he made his scholarship decision.
- The Athletic Director stated in his interview with OCR that the first time the complainant reported sexual harassment to him was in early May 2005. He then told her to go see the Director of Human Resources. The Athletic Director also stated that when the Coach became head track coach, the Athletic Director informed him that the track team lacked discipline, behaved rudely and lacked respect. The Athletic Director stated he informed the Coach to do whatever he could to instill discipline and accountability.
- The Human Resources Director stated in her interview that she first became aware of the sexual harassment complaint on May 6, 2005, when the Athletic Director reported it to her.
- The Family Crisis Counselor stated that her notes indicated the complainant informed her she complained about the sexual harassment to the Director of Student Service on May 6, 2005.
- The Director of Student Services stated in his interview with OCR that the complainant came to him in April 2005, and complained about the Coach

drinking at a track meet and the quality of his coaching, but she never mentioned anything about sexual harassment.

- The Dean of Student Services stated in her interview with OCR that the complainant dropped by her office in April 2005, and complained about the Coach's drinking. The complainant did not mention anything about sexual harassment.

Analysis and Conclusion

Using the legal standard for retaliation outlined above, OCR concludes the complainant participated in a protected activity by filing a sexual harassment complaint with the College and an adverse action (denying the complainant a track scholarship for the following academic year) did occur. However, there was insufficient evidence to conclude that the complainant engaged in the protected activity prior to the adverse action taken by the College. Both the complainant and the College agree the adverse action occurred on May 2, 2005, when the Coach informed her of his decision to not offer the complainant a track scholarship for the following academic year. The complainant was not able to provide any documents or witnesses to support her allegation that the College retaliated against her after she engaged in a protected activity. The complainant's own witness, the Family Crisis Counselor, stated that her notes indicated the complainant informed her she had reported the sexual harassment to the College on May 6, 2005. The information provided by the Human Resources Director also indicated the complainant reported the sexual harassment on May 6, 2005. Since the evidence indicated the complainant did not participate in the protected activity prior to the College's adverse action, OCR finds that a *prima facie* case of retaliation does not exist. Consequently, OCR is closing allegation 2 effective the date of this letter.

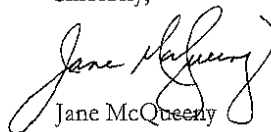
As noted earlier in this letter, on _____(date), the College entered into an Agreement to address Title IX concerns. The enclosed Agreement, when fully performed, will resolve the Title IX issues raised during the investigation of complaint allegation 1. OCR is accepting the Agreement and will monitor the College's implementation of the Agreement. When OCR concludes that the College has fully implemented the terms of the Agreement, we will close the complaint. If the College fails to adhere to its commitment, OCR may resume compliance activity relative to our procedural requirement concerns.

This determination letter is not intended, nor should it be construed, to cover any issues that may exist regarding compliance with the regulations implementing Title IX that are not specifically discussed herein.

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If you have any questions regarding this letter, please contact Michael Tiffany, Equal Opportunity Specialist, at (816) 268-0582 (voice) or (877) 521-2172 (telecommunications device for the deaf), or by email at Michael.Tiffany@ed.gov.

Sincerely,



Jane McQueeney
Supervisory Attorney

Enclosure

AGREEMENT
Garden City Community College
OCR Docket Number 07062032

Garden City Community College (College), Garden City, Kansas, submits this Agreement to the U.S. Department of Education, Office for Civil Rights (OCR), to resolve OCR Docket Number 07062032 and ensure the College's compliance with Title IX of the Education Amendments of 1972 (Title IX), 20 United States Code (U.S.C.) §1681, and its implementing regulation, 34 Code of Federal Regulations (C.F.R.) Part 106, and Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. 2000d, and its implementing regulation, 34 C.F.R. §100.7(e)

The College agrees to take the following actions:

A. Title IX Coordinator

1. By June 1, 2007, the College will designate at least one employee to coordinate its efforts to comply with Title IX in accordance with 34 C.F.R. 106.8(a). The College agrees to notify students and employees of the name or title, office address and telephone number of the designated employee(s) by publishing a notice in the College catalog. This requirement applies both to printed and electronic versions of the College catalog.
2. By August 1, 2007, the College will provide documentation demonstrating compliance with paragraph A.1 of this Agreement by submitting the resume of the individual selected and any additional information regarding the training or experience of the individual related to his or her ability to coordinate the College's efforts to comply with title IX and a copy of the revised College catalog, along with the website address for the electronically updated College catalog.

B. Title IX Student Grievance Procedure

1. By August 1, 2007, the College will adopt a student grievance procedure providing for prompt and equitable resolution of complaints of discrimination based on sex. The grievance procedure shall at a minimum include the following elements:
 - (a) Notice to students of the procedure, including where and in what manner complaints may be filed;
 - (b) Application of the procedure to complaints alleging sexual harassment carried out by employees, other students, or third parties;

- (c) Adequate, reliable, and impartial investigation of complaints, including the opportunity for all parties involved to present witnesses and other evidence;
 - (d) Reasonably prompt timeframes for major stages of the complaint process;
 - (e) Notice of the outcome of complaints to the parties involved, to the extent allowed by the Family Educational Rights and Privacy Act; and
 - (f) An assurance that the College will take steps, as appropriate, to remedy the effects of and prevent the recurrence of discrimination of which it has notice.
2. By August 1, 2007, the College will publish the grievance procedure developed in accordance with paragraph B.1 of this Agreement in both the printed and electronic versions of the College catalog.
 3. By August 1, 2007, the College will provide documentation to OCR demonstrating compliance with paragraph B.1 and B.2 of this Agreement by submitting a copy of the revised College catalog, along with the website address for the electronically updated College catalog.

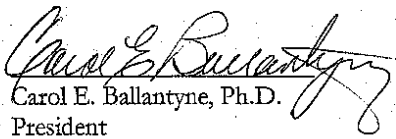
C. Recordkeeping Procedure

1. By August 1, 2007, the College will adopt a procedure for recording complaints of discrimination based on sex submitted to the College. The documentation shall include the student's sex, the name and contact information of the person making the complaint, the name of the alleged harasser, the name and contact information of any witnesses, the date the discrimination occurred, a narrative description of the alleged act of discrimination, a copy of each investigative interview conducted in response to the complaint, a copy of the investigative findings and conclusion, and narrative description of any corrective action taken by the College. The recordkeeping procedure shall also require the College to maintain a paper and/or electronic copy of these documents for a period of at least three years from the date the complaint was filed.
2. By August 1, 2007, the College will provide documentation to OCR demonstrating its compliance with paragraph C.1 of this Agreement by submitting a letter from the College President identifying by title the employee(s) responsible for recording the complaints as outlined in paragraph C.1 of this Agreement and a copy the College's recordkeeping procedures.

D. Training Requirements

1. By October 1, 2007, the College will provide training to the designated Title IX coordinator(s), all College administrators and faculty. The training will cover:
 - a. The newly appointed Title IX coordinator(s) as outlined in paragraph A.1 of this Agreement, and the newly developed grievance and recordkeeping procedures outlined in paragraphs B.1 and C.1 of this Agreement.
 - b. The College's responsibility to ensure compliance with the Title IX prohibition against discrimination based on sex and the Title VI prohibition against intimidatory or retaliatory actions.

2. By October 1, 2007, the College will provide documentation to OCR demonstrating its compliance with D.1 of this Agreement. The documentation must include the following information:
 - a. The date, time and location of the training;
 - b. An outline of the training material;
 - c. The name(s) and title(s) of the individual(s) who conducted the training; and
 - d. The name, title and signature of each individual who attended the training.


Carol E. Ballantyne, Ph.D.
President

January 9, 2006
Date