



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS—REGION VII

NOV -7 2007

Erin Cunningham, Campus President  
High-Tech Institute  
9001 State Line Road  
Kansas City, Missouri 64114

Re: OCR Docket # 07072055

Dear President Cunningham:

On May 11, 2007, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received a complaint against the High-Tech Institute (Institute), Kansas City, Missouri, alleging discrimination on the bases of race (African-American) and sex (female), and retaliation for engaging in a protected activity. This letter is to inform you of the results of our investigation of this complaint. OCR has determined there are some compliance concerns.

Specifically, the complainant alleged during her second year of the surgical technologist program, the Institute:

- (1) treated her differently than similarly situated white students by marking her late to class but not counting white students late, interfering with and preventing her from completing her surgical labs, inappropriately placing her in a dental rather than a surgical externship, and humiliating her in front of the class by giving her handouts with titles such as "how to deal with people you cannot stand";
- (2) subjected her to sexual harassment, and failed to take appropriate action to address the harassment after she reported it; and
- (3) retaliated against her for engaging in a protected activity (reporting sexual harassment) by marking her late to class but not counting other students late, and by interfering with and preventing her from completing her surgical labs, eventually expelling her from the Institute.

OCR is responsible for enforcing:

- Title VI of the Civil Rights Act of 1964 (Title VI), 42 United States Code (U.S.C.) § 2000d, and its implementing regulation, 34 Code of Federal Regulations (C.F.R.) Part 100. Title VI prohibits discrimination on the basis of race, color or national origin by recipients of Federal financial assistance (FFA). The Title VI regulation also prohibits retaliation at 34 C.F.R. § 100.7(e).
- Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681, and its implementing regulation, 34 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 FFA. The Title VI regulation prohibiting retaliation is incorporated, by reference, into the Title IX regulation at 34 C.F.R. § 106.71.
- Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance.
- Age Discrimination Act of 1975 (Age Act), 42 U.S.C. § 6101, and its implementing regulation, 34 C.F.R. Part 110. The Age Act prohibits discrimination on the basis of age by recipients of FFA.

As a recipient of FFA from the Department, the Institute is subject to Title VI, Title IX, Section 504, and the Age Act.

OCR has determined the Institute is a proprietary vocational school (a privately owned, profit-making enterprise that teaches a trade or skill leading to immediate employment). Title VI complaints filed with OCR against proprietary vocational schools are to be forwarded to the U.S. Department of Veterans Affairs for processing. However, OCR remains responsible for Title VI complaints where the proprietary vocational school offers non-degree courses for which credit is given and which, on transfer, would be accepted toward a baccalaureate or higher degree by a degree-granting institution. OCR has learned that courses offered by the Institute for credit are transferable toward a baccalaureate degree. As such, OCR has authority to process this complaint under Title VI.

Issue: Racial Discrimination

Legal Standards

Under the Title VI implementing regulation, at 34 C.F.R. § 100.3(a), no individual may be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination on the ground of race, color, or national origin under any program or activity that receives Federal funds. The Title VI regulation at 34 C.F.R. § 100.3(b)(1)(i)-(iv) and (vi) specifically provide that a recipient shall not, on the basis of race, color, or national origin: deny an individual any service; provide any service to an individual which is different, or is provided in a different manner, from that provided to others; subject an individual to segregation or separate treatment in any matter related to the receipt of service; restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others; or deny an individual an opportunity to participate in the program or afford an opportunity to do so which is different from that afforded to others under the program.

When OCR investigates allegations of different treatment on the basis of race, OCR determines whether the recipient treated a student or students differently than similarly situated students of another race. If OCR determines the recipient treated a student or students differently than it treated similarly situated students of another race, OCR examines whether the recipient can identify a legitimate nondiscriminatory reason for the different treatment. If it does, then OCR determines whether the school's proffered reason is a pretext for discrimination.

Findings of Fact

Marking Complainant Late

The complainant alleged that during her second year of the surgical technologist program, the Institute treated her differently than similarly situated white students by marking her late to class, but not marking white students late.

The complainant's student file indicated she enrolled at the Institute on April 28, 2005, and that on March 22, 2007 (during the complainant's second year in the surgical technologist program), she was dismissed from the program. The complainant contended the Institute dismissed her because of her tardiness and absences from class, and that instructors unfairly marked her late to class. The complainant identified two white students whom she alleged were not counted late to class even though they were often tardy.

The student catalog sets forth the Institute's attendance policy.

### ATTENDANCE

*The School's attendance policy approximates the expectations found in a working situation. Each student needs to learn the discipline of regular and prompt attendance as well as the skills involved in his field of study. When the student moves from training into a career, the employer will be very interested in dependability and punctuality. No matter how skilled the person, an employee is valuable only when present on the job. Satisfactory student attendance is established when the student is present in his assigned classroom for the required amount of scheduled contact time.*

*Students are expected to attend all scheduled classes and to be on time for their classes. The loss of subject material due to tardiness or absence can be very costly in this intensive educational environment.*

*In the event of an emergency or an unavoidable absence, students must call the Student Services Department. The message is then forwarded to the Instructor.*

*A student who reports to class after the scheduled start time or returns late from a class break, or who departs prior to the designated class dismissal time, is considered tardy. The tardies are rounded up to the nearest 15-minute intervals. All absences and tardies are recorded, regardless of the reason and become part of the student's record at the School. Students earn attendance credit by attending classes as scheduled. If accumulated tardies and absences reach more than 10% of the scheduled hours, the student may be placed on Attendance Probation.*

*Students who have accumulated absences and tardies of 15% of their scheduled hours may be required to appear before the Attendance Review Board. At this time a student is given the opportunity to offer an explanation for his excessive absences. The School may then choose to terminate the student from High-Tech Institute, have the student repeat a course, place him on restricted hours, or other such action as the School deems appropriate. A student who is absent for ten consecutive days may be automatically terminated from School.*

*High-Tech Institute does not permit a student to "make up" absences which have accrued on the attendance record during the classroom training courses. However, during the externship portion of training, all absences must be made up to ensure completion of the required number of extern hours prior to graduation.*

OCR reviewed the complainant's attendance records and the attendance records of the two white students whom the complainant alleged were not counted late to class. A review of all classes taken by the complainant in 2006 showed the following regarding the attendance and tardiness of the complainant and the two white students identified by the complainant.

1. In the January 2 through 27, 2006 course, Life and Death in the OR, of the 17 classes, the complainant was marked late in three classes for a total of 45 minutes; the complainant was absent for two classes. The attendance records showed the first white student the complainant identified was marked late in one class for a total of 30 minutes; she was absent for one class. The second white student was marked late in two classes for a total of 60 minutes; she was absent for three classes.
2. In the January 30 through February 24, 2006 course, Cardiovascular System/Surgery, of the 20 classes, the complainant was marked late in four classes for a total of 300 minutes; the complainant was absent for one class. The attendance records showed the first white student the complainant identified was marked late in seven classes for a total of 195 minutes; she was absent for two classes. The second white student was marked late in six classes for a total of 165 minutes; she was absent for three classes.
3. In the February 27 through March 24, 2006 course, Infection Control, of the 19 classes, the complainant was marked late in three classes for a total of 90 minutes; the complainant was absent for three classes. The attendance records showed the first white student was marked late in five classes for a total of 105 minutes; she was not absent for any classes. The second white student was marked late in three classes for a total of 45 minutes; she was not absent for any classes.
4. In the March 27 through April 21, 2006 course, Law & Ethics/OR Facility, of the 19 classes, the complainant was not marked late for any of the classes; the complainant was absent for five classes. The first white student was not marked late for any classes; she was absent for three classes. The second white student was not marked late for any classes; she was absent for five classes.
5. In the April 24 through May 19, 2006 course, Special Senses, of the 20 classes, the complainant was not marked late for any classes; she was absent for two classes. The first white student was marked late in one class for a total of 30 minutes; she was absent for three classes. The second white student was not marked late for any classes; she was absent for three classes.
6. In the May 22 through June 16, 2006 course, Anatomy & Physiology I, of the 17 classes, the complainant was marked late in one class for a total of 15 minutes; she was absent for six classes. The first white student was marked late in two classes for a total of 75

minutes; she was absent for three classes. The second white student was not marked late for any classes; she was absent for one class.

7. In the July 10 through August 4, 2006 course, Instrumentation/Supplies, of the 20 classes, the complainant was marked late in four classes for a total of 90 minutes; she was absent for eight classes. The first white student did not take the course, but the second white student was marked late in three classes for a total of 165 minutes; she was absent for two classes.
8. In the August 7 through September 1, 2006 course, Anatomy & Physiology II, of the 20 classes, the complainant was marked late in six classes for a total of 390 minutes; she was absent for five classes. The first white student was not in the class, but the second white student was marked late in three classes for a total of 165 minutes; she was not absent in any classes.
9. In the October 30 through December 1, 2006 course, Engaging in Communication, of the 16 classes, the complainant was marked late in three classes for a total of 150 minutes; she was absent for five classes. Neither of the white students the complainant identified was in the class.

Based on the information provided, the complainant was in six classes with one of the white students she alleged was not marked late to class. In those six classes the complainant was marked late 11 times for a total of 450 minutes, and was absent for 19 classes. The white student was counted late 16 times for a total of 435 minutes, and was absent for 12 classes. The complainant was in eight classes with the other white student she alleged was not counted late to class. In those eight classes, the complainant was counted late 21 times for a total of 930 minutes, and was absent for 32 classes. The white student was counted late 17 times for a total of 600 minutes, and was absent for 17 classes.

The complainant's student file showed on July 21, 2006, after discussions with the student services coordinator, the complainant received an attendance warning because her accumulated tardiness and absences reached more than 10% of the scheduled class hours. On August 3, 2006, the complainant was placed on attendance probation. OCR reviewed the complainant's attendance records and the attendance records of the other students in the complainant's classes. OCR identified 15 similarly situated students in the complainant's classes during the 2005-06 and 2006-07 academic years. These 15 students had attendance records similar to the complainant's record. Like the complainant, these 15 students were placed on attendance probation due to excessive tardiness and absenteeism. OCR reviewed the student records of the 15 similarly situated students (six white students, eight African-American students, and one Asian student) to determine if their accumulated tardiness and absences reached more than 10%, and, if so, whether the students were placed on

attendance probation. All 15 students had tardiness and absences of more than 10% of the scheduled class hours, and all 15 were placed on attendance probation.

#### Completion of Surgical Labs

The complainant alleged the Institute treated her differently than similarly situated white students by interfering with and preventing her from completing her surgical labs.

According to the Institute, a student's education and career preparation culminates in the externship. The Institute's catalog explained that the "*externship is undertaken following the successful completion of all classroom training and consists of 320 clock hours, averaging eight hours a day. Students work in a hospital, surgicenter, or private physician's office. During the externship, the student is allowed to assist surgeons during surgery in the operating room. The student is able to perform the skills taught during the classroom portion of training...*"

The Institute maintained a daily contact log for each of its students. The log is a computerized file in which instructors, staff and administrators record their observations and interactions with students at the Institute. OCR reviewed the complainant's daily contact log. Following are actual entries from the complainant's log documenting the complainant's progress in the surgical technologist program from June 2006 to August 10, 2006.

<u>Date</u>	<u>Information Provided By</u>	<u>Information Provided</u>
6/7/2006	Student Ser.	Complainant out of town until 6/14/2007.
6/12/2006	Program mgr.	Complainant struggling & way behind in lab; she missed 14.45 hrs; she is struggling to get along with other students.
6/15/2006	Student Ser.	Complainant transferred from 4 <sup>th</sup> to 3 <sup>rd</sup> session because it is smaller & she can get more individual attention.
6/16/2006	Program mgr.	Met with complainant to discuss her behavior and expectations.
6/29/2006	Program mgr.	Complainant called to see if she could work in lab. Told she could.
7/10/2006	Student Ser.	Complainant called Dr. appt.; will be back tomorrow.

- 7/13/2006 Student Ser. Complainant called, she was sick.
- 7/17/2006 Program mgr. Complainant struggling in class; failed 1<sup>st</sup> unit exam; had outpatient surgery restricted lifting, but Dr. note did not say lifting restriction.
- 7/18/2006 Student Ser. Complainant in car accident; won't be in class.
- 7/20/2006 Student Ser. Complainant has Dr.'s appt.
- 7/21/2006 Program mgr. Had talk with complainant regarding her attendance; she missed 22 hrs in 2 weeks; failed first exam, not a team player; skills not great and she needs to be in lab as much as possible.
- 7/24/2006 Student Ser. Brought complainant in to sign attendance warning; she questioned every aspect of attendance policy.
- 7/27/2006 Student Ser. Complainant had Dr.'s appt; not in today.
- 7/31/2006 Student Ser. Complainant had court date in Las Vegas.
- 7/31/2006 Program mgr. Complainant will be out for 2-3 days because she is going to Las Vegas for legal matters; talked to her about attendance hurting her; she has missed 22.25 hours; she is not doing well in class, passing but not by much.
- 8/4/2006 Program mgr. Complainant missed 9 hours this week; she is suffering in lab; proving to be a challenge in class with her cell phone, and constant questioning authority of instructor; she is the furthest behind in lab.
- 8/9/07 Program mgr. Complainant had run in with instructor; complainant disrespectful; missed 30 hours in last class; only attended 30 minutes so far in this class.

8/10/2006 Student Ser. Student alert and student conference alert filled out for Program mgr. complainant; meeting with complainant, instructors, and externship coordinator; discussed responsibilities of complainant; her habit of being late and asking other students for their notes so she can copy down important information caused disruption in class and reason for confrontation; trying to help complainant; she was to come in early on Tuesdays & Thursdays; only completed 3 of 10 procedures; much work to do.

According to the complainant's student file, on August 10, 2006, the program manager, the externship coordinator, and the complainant's instructor held a student conference with the complainant to discuss her attendance, tardiness, classroom disruptions, attitude and her unsatisfactory lab skill progress. Institute staff participating in this meeting agreed for the complainant to come in on Tuesdays or Thursdays for one hour prior to class to work on skills. Then beginning on September 4, 2006, the complainant was to come to a review lab on Tuesdays and Thursdays for a minimum of two hours to work on instrument identification and other skills. The complainant refused to sign the student conference summary.

Following are the entries from the complainant's daily contact log documenting her progress in the surgical technologist program from August 14, 2006, through August 28, 2006.

<u>Date</u>	<u>Information Provided By</u>	<u>Information Provided</u>
8/14/2006	Student Ser.	Complainant upset because she had talked to instructor about postponing taking test till Monday (she was not ready for test on Friday), instructor made her leave class; when she tried to take test on Monday, it was delayed till Tuesday (due to lecture).
8/18/2006	Student Ser.	Complainant received attendance warning letter (13.30%).
8/22/2006	Student Ser.	Complainant taking son to airport.
8/22/2006	Program mgr.	Complainant struggling with attendance; switching to 3 <sup>rd</sup> session proven more difficult; complainant does not want to get to table to scrub, tells instructor she is good on the present case and would like to go to next case, but she is not ready; continue to try to work with her.

8/28/2006 Program mgr. The complainant's attendance is affecting her grades; she failed the latest test; if course is failed not have a course again for 11 months; she is 13% overall but has missed 57% of course. Instructor stated complainant angry she set up her case and was not able to do it because he was tied up with another student. Complainant was rude and unprofessional in front of the class.

The complainant's student file indicated another student conference was held on August 28, 2006, to discuss the complainant's preparation for lab reviews. As a result of the August 28 conference, the complainant was scheduled to attend review lab sessions on Tuesdays and Thursdays beginning September 5, 2006, for two hours each.

Following are the entries from the complainant's daily contact log documenting her progress in the surgical technologist program from October 5, 2006, through November 29, 2006.

<u>Date</u>	<u>Information Provided By</u>	<u>Information Provided</u>
10/5/2006	Extern. Coor	Complainant did not show up for review or call.
10/11/2006	Program mgr.	Complainant did not show up for review yesterday.
10/17/2006	Program mgr.	Complainant at extern meeting, but she did not stay to work on any of her skills.
10/19/2006	Program mgr.	Complainant did not come to review and did not call; it has been 3 weeks since complainant was in review.
10/19/2006	Extern Coor	Complainant did not show up for review lab; she left message she was there earlier and could not find anyone; coordinator noted she was in the lab from 11:00 a.m. to 4:30 p.m. and did not see complainant.
10/26/2006	Program mgr.	Complainant showed up for review lab at the time it was being closed down yesterday; therefore, they were not able to do any cases; complainant did not show up for review or call today.
11/7/2006	Student Ser.	Complainant not in today.

11/8/2006 Student Ser. Complainant not in; daughter had tonsils out.  
11/9/2006 Student Ser. Complainant sent home for being out of dress code.  
11/28/2006 Student Ser. Complainant not in; child sick.  
11/29/2006 Student Ser. Complainant late; had to give child medication at 3:40 p.m.

According to information provided by the Insitute, all students must complete an Externship Final Clearance Checklist (Checklist) before beginning the externship. The Checklist outlined the 11 benchmarks and 80 skills each student must perform. The complainant was unable to successfully complete the Checklist, and as a result she was placed in review status on December 6, 2006, to receive assistance with achieving the level of skill necessary to participate in the externship. The complainant's student file contained a Review Status Letter of Understanding stating the complainant was scheduled to attend review sessions for a minimum of two hours each session on Tuesdays and Thursdays from December 6, 2006 through January 6, 2007. The program manager and the director of education signed this form. The complainant did not sign this form.

Following are the entries from the complainant's daily contact log documenting her progress in the surgical technologist program from December 12, 2006, through January 5, 2007.

<u>Date</u>	<u>Information Provided By</u>	<u>Information Provided</u>
12/12/2006	Program mgr.	Complainant's 2 <sup>nd</sup> day of official review status and she did not come to review; complainant suppose to come in and work on her skills.
12/15/2006	Program mgr.	Complainant did not come in for review and did not call; she did call in later and said her mom was in the hospital.
1/3/2007	Extern Coor	Complainant did not show up for review or call on 1/2/07.
1/4/2007	Director (Interim)	Spoke to complainant; she told director she was unaware terms of letter; she said she often came in to do review & no one was available to her; told complainant she would check on situation; new specific times will be set up with requirements; if she misses review could be terminated.

1/5/2007 Extern Coor Complainant was called on 1/4/07 and scheduled to meet on 1/8/07 to sign review status letter of understanding. She was told specific dates to work in the review lab.

According to the Institute, the complainant indicated she did not understand the terms of her review status. As a result, on January 8, 2007, the complainant signed a new Review Status Letter of Understanding that specifically outlined the dates, times, and required outcomes of the complainant's review sessions: (1) the complainant would report to review lab every Tuesday and Thursday, beginning January 9, 2007 and ending February 8, 2007; (2) the complainant would work in the lab for four hours each Tuesday and Thursday from 11:00 a.m. - 3:00 p.m.; (3) the complainant must complete 22 blank spots on the card including five procedures, the final foundation skills, and emergency final; and (4) an attendance record must be completed at the end of each session. The complainant, the program manager, and the director of education all signed the letter of understanding. The letter of understanding specifically stated that being on "review status" was the complainant's last chance to bring her skills to an acceptable level of performance to qualify her for an externship, and that if she did not accomplish these goals, she could be terminated from the program.

Following are the entries from the complainant's daily contact log documenting her progress in the surgical technologist program from January 9, 2007, through March 26, 2007.

<u>Date</u>	<u>Information Provided By</u>	<u>Information Provided</u>
1/9/2007	Program mgr.	Complainant came to review session; she was close to being finished on time but had numerous contamination issues; will have to take her back to basics & start over on skills.
1/11/2007	Extern Coor	Complainant came to review session; worked on scrub, gown, and glove and did open gall bladder; complainant struggled in several areas:
1/16/2007	Extern Coor	Complainant late to review lab due to ice, and she was unable to stay all day because her mother was being released from hospital.

1/18/2007	Extern Coor	Complainant 40 minutes late to review; set up for open gall bladder; technique better; however she was very slow getting instruments and was searching a lot for instruments; she was still having difficulty with basic instruments.
1/23/2007	Extern Coor	Complainant 46 minutes late for review lab.
1/31/07	Program mgr.	Complainant 20 minutes late to review on 1/30/07; walked through D&C pretty well; had difficulties with bowel resection; 1 or 2 more times and she is ready to move to TAH.
2/1/2007	Extern Coor	Complainant having car troubles; excused complainant from review; she will make up on 2/7/07.
3/5/2007	Extern Coor	Complainant's review status will expire on 3/8/2007; she has not progressed as much as hoped; complainant dedicated through 2/8/07, but not since then.
3/6/2007	Extern Coor	Worked with complainant doing TAH; she started out slow & messy; opened suture packs and tossed them on table; had trouble retaining her skills.
3/20/2007	Extern Coor	Complainant didn't show up for review; 2 <sup>nd</sup> review contract ended on 3/8/07; but coordinator still working with her when she comes in.
3/23/2007	Institute Officials	Complainant met with DOE, externship coordinator and other officials regarding review status. Complainant violated review terms by not attending proscribed review times; review status extended twice and she must be terminated; complainant became very hostile and alleged officials lying; complainant threatened legal action; told to leave building.
3/26/2007	Institute	Complainant terminated from program.

During an August 1, 2007 interview, OCR informed the complainant and her attorney the Institute's reason for the complainant's expulsion from the Institute was that the complainant failed to reach the appropriate skill level due to her continued poor attendance.

The complainant stated she tried to get help, but the instructors found excuses not to help her. The complainant provided the names of several African-American students she said would testify on her behalf. Only one of those students agreed to provide information to OCR.

The complainant's witness (an African-American student now in an externship) was in the surgical technology program and had at least three classes with the complainant. She said the complainant consistently missed class on Mondays. On Mondays, the instructors gave their assignments for tests on Friday. Because the complainant was not in class on Mondays, the teacher would have to back track to help the complainant catch up, and other students in the class would have to give the complainant their notes. According to the complainant's witness, Tuesdays, Wednesdays, and Thursdays were lab days, and each student had to set up for labs. It took the complainant much longer to set up than other students, because she had not been in class. Further, it took the complainant more time to break down her lab because she went to the rest room at bad times, or she spoke on her cell phone. This caused lab delays (there were only four stations), and that caused other students in the class to get angry because they could not set up their station while waiting on the complainant. According to the complainant's witness, classmates were supposed to help each other, but the complainant expected others to help her more than other students.

According to the complainant's witness, the Institute's staff scheduled one-on-one review sessions to help the complainant, but the complainant often did not show up. The complainant's witness stated she did not think the complainant's expulsion was discriminatory; she feels the complainant was expelled because she did not take the classes seriously.

During interviews with OCR, the externship coordinator identified four students (all African-American) who were not placed in externships during the 2006-07 academic year at the time they completed their classroom experience. OCR reviewed the student files of these four students to determine if the Institute worked with the students to attain adequate skill levels, and whether the students were eventually placed in an externship. Based on these records, all four of the students were placed on review status for at least 30 days to work on lab skills before proceeding to an externship. For two of these students, the Institute developed a specific plan, similar to the complainant's, requiring them to attend review labs to work on specific skills and procedures until they demonstrated adequate skill levels. All four of these students have now been placed in externships.

Surgical Internship/Externship

The complainant alleged the Institute treated her differently than similarly situated white students by inappropriately placing her in a dental rather than a surgical externship. According to the complainant, several African-American students were placed in a dental clinic for their externship rather than a surgical facility. During an August 1, 2007 interview, the complainant clarified that she had not been placed in a dental clinic for an externship, but provided the names of two black students she alleged were placed in a dental externship rather than surgical externships.

OCR reviewed the externship placement of the two African-American students identified by the complainant. Institute records showed the first African-American student identified by the complainant did his externships at Providence Medical Center, Truman Medical Center, and St. Luke's Hospital. OCR attempted to contact this student by telephone, but the student did not return OCR's calls. The second African-American student did her externship at Providence Medical Center and Olathe Medical Center. OCR was able to locate and interview the second student identified by the complainant, and she verified she did her externships at Providence Medical Center and Olathe Medical Center, not at a dental clinic.

In an interview with OCR staff, the externship coordinator was asked if any surgical technologist students were placed in dental programs. The externship coordinator stated surgical technologist students are never placed in dental programs.

OCR reviewed information provided by the Institute for all students in the surgical technologist program who were placed in an externship during the 2005-06 and 2006-07 academic years. The Institute provided information identifying a total of 110 students in the surgical technologist program who were placed in externships during the 2005-06 and 2006-07 academic years. Of the 110 students, 68 were white, 36 were African-American, and six were considered other (Hispanic, multi-ethnic background, etc.). The information reviewed by OCR confirmed that none of these students were placed in dental facilities for externships. Rather, 107 of the 110 students were placed in medical centers, hospitals, or surgery centers. Of the remaining three students, one white student was placed at Western Missouri Mental Health Center; one white student was placed at the Student Massage Therapy Clinic; and one African-American student was placed at the Kansas City Orthopedic Institute/Sports Medicine Center.

Humiliation In Class

The complainant alleged she was treated differently than similarly situated white students by being humiliated in front of the class when the externship coordinator gave her a handout regarding how to deal with people. The complainant alleged the instructor handed her the article in front of the class. In a telephone conversation with OCR staff, the complainant

stated the externship coordinator gave the handout to all students in the classroom, but told the class the handout was for the complainant.

According to the Institute the handout is entitled, "How to Deal With People You Do Not Understand." The handout was offered to students by the externship coordinator. In preparing students for an externship, the externship coordinator tried to prepare students to function effectively in the workplace, which included developing all skills necessary to successfully begin a new career and become a professional in their chosen field of study. In an August 29, 2007 interview, the externship coordinator indicated there were a number of handouts she found on the Internet and passed out to students. She stated she put a number of handouts, including this particular handout, on the back table in the classroom and told students to feel free to take a copy. She indicated she did not specifically give the handout to the complainant. The externship coordinator stated she provided such handouts to students because they would be dealing with difficult people in the workplace. The handouts were provided to students to help students deal professionally with people.

#### Legal Analysis and Conclusion

The complainant alleged during her second year of the surgical technologist program, the Institute treated her differently than similarly situated white students by marking her late to class but not counting white students late, by interfering with and preventing her from completing her surgical labs, by inappropriately placing her in a dental rather than a surgical externship, and by humiliating her in front of the class by giving her handouts regarding dealing with people.

As noted above, when OCR investigates allegations of different treatment on the basis of race, OCR determines whether the recipient treated the complainant differently than similarly situated students of another race. If OCR determines the recipient treated the complainant differently than it treated similarly situated students of another race, OCR examines whether the recipient can identify a legitimate nondiscriminatory reason for the different treatment. If it does, then OCR determines whether the recipient's proffered reason is a pretext for discrimination. To determine whether different treatment occurred in this case, OCR determined whether the Institute treated the complainant (an African-American) differently than similarly situated white students with respect her allegations.

First, the complainant alleged instructors treated her differently than similarly situated white students by marking her late to class but not counting white students late. The available evidence showed the complainant was marked late for numerous classes, and that the two similarly situated white students identified by the complainant were also marked late for numerous classes. One of the white students identified by the complainant was marked late to class more often than the complainant. Further, the complainant and all 15 students in the

complainant's classes during the 2005-06 and 2006-07 school years who accumulated tardiness and absences that reached more than 10% of the scheduled class hours were placed on attendance probation in accordance with the Institute's attendance policy. The available evidence does not establish that any instructors at the Institute treated the complainant differently than white students by marking her late to class, but not marking white students late to class.

Second, the complainant alleged instructors treated her differently than similarly situated white students by interfering with and preventing her from completing her surgical labs. The complainant contended she tried to get help to improve her skills, but the instructors found excuses not to help her. The available evidence indicated instructors and administrators at the Institute made repeated efforts to assist the complainant in attaining acceptable skill levels, but the complainant did not avail herself of the opportunities provided. The daily contact log from instructors, staff and administrators showed numerous instances in which the complainant did not attend review labs. The log also documented repeated attempts on the part of instructors and staff to notify the complainant that she was behind in labs; consistent attempts by instructors to work with the complainant on her skills; and more than one extension of the complainant's review status to give the complainant additional time to attain the necessary skill level to proceed to an externship. The complainant's witness (an African-American student in the complainant's classes) confirmed the complainant's absences and tardiness in class and review sessions. Further, the Institute placed four other African-American students on externship review status during the 2006-07 academic year because they did not meet acceptable skill levels at the time they completed their classroom experience. The Institute worked with all four students to ensure they developed the required skills and ultimately placed all four of these students in externships. The complainant was the only student who did not demonstrate the necessary skills to advance to an externship. The available evidence did not establish the Institute interfered with or prevented the complainant from completing her surgical labs or that the Institute treated the complainant differently than similarly situated students because of race with regard to surgical labs.

Third, the complainant alleged the Institute treated her differently than similarly situated white students by inappropriately placing her in a dental rather than a surgical externship. The complainant acknowledged she was not placed in a dental clinic for an externship, but that other African-American students were. The available evidence did not establish that the Institute placed any students in a dental clinic rather than a surgical facility for an externship. During the 2005-06 and 2006-07 academic years, there were a total of 110 students in the surgical technologist program who were placed in externships. Of the 110 students, 68 were white, 36 were African-American, and six were considered other (Hispanic, multi-ethnic background, etc.). None of the 110 students, including the African-American students identified by the complainant, were placed in dental facilities. There is no evidence that the Institute placed any students in dental clinics rather than surgical facilities for externships, or

that the Institute treated the complainant differently than similarly situated students because of race with regard to placement in externships.

Finally, the complainant alleged the externship coordinator treated her differently than similarly situated white students by humiliating her in front of the class when she was given a handout regarding dealing with people. The complainant admitted the externship coordinator gave the handout to all students in the classroom, but said that the externship coordinator stated the handout was for the complainant. The externship coordinator stated she put a number of handouts on the back table in the classroom and did not specifically give the handout to the complainant. The handouts were provided to students to help them deal professionally with difficult people. All students were provided with the same handout. The available evidence did not establish the externship coordinator treated the complainant differently than other students because of race, by distributing the handout to the class, or by handing one to the complainant.

OCR determined there is insufficient evidence to support a finding that the Institute discriminated against the complainant on the basis of race by treating her differently than similarly situated students by marking her late to class but not counting white students late, by interfering with and preventing her from completing her surgical labs, by inappropriately placing her in a dental rather than a surgical externship, and by humiliating her in front of the class by giving her handouts regarding dealing with people. OCR is closing the race discrimination allegations of this complaint effective the date of this letter.

**Issue: Sexual Harassment**

**Legal Standard**

The Title IX regulation at 34 C.F.R. § 106.31(a) prohibits discrimination on the basis of sex. Sexual harassment of students can be a form of sex discrimination prohibited by Title IX. Sexual harassing conduct can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. A sexually hostile environment can exist if conduct of a sexual nature is sufficiently severe, persistent, or pervasive to limit a student's ability to participate in or benefit from the education program or creates a hostile or abusive educational environment. A school will be liable for sexual harassment under Title IX if the school has notice of the harassment and fails to take appropriate steps to end the harassment, remedy its effects, and prevent further incidents of harassment.

### Findings of Fact

The complainant alleged she was subjected to sexual harassment, and the Institute failed to take appropriate action to address the harassment after she reported it. The complainant stated that one of her male instructors touched her inappropriately and referred to her as “hon” and “sweetheart” when they were in the classroom alone. The complainant stated the male instructor harassed her from May 2005 when she entered the program until March 2007 when she was dismissed from the program. The complainant also alleged she was sexually harassed beginning in June 2005 through the spring of 2006 when a female instructor approached the complainant about dating the female instructor’s son. The complainant informed OCR there were no witnesses to any of the harassment. It occurred when she was alone with the instructors.

The complainant alleged she told her counselor, her psychology instructor, and the student services coordinator about the sexual harassment. The complainant stated her counselor is no longer at the Institute and the complainant did not know her last name. Institute officials confirmed the Institute no longer employs the counselor, and indicated the Institute did not know the counselor’s whereabouts or have contact information for her. OCR reviewed the Institute’s daily contact log for the complainant, which contained numerous entries by the counselor about the complainant. The entries by the counselor, however, pertained to enrollment issues; there were no notes indicating the complainant reported any incidents of sexual harassment to the counselor.

According to the complainant, she spoke to her psychology instructor about the sexual harassment within six months of the time the harassment began. The complainant informed OCR the psychology instructor told the complainant she should think about the consequences before she reported her concerns about harassment to the school administration, but if the situation became too intolerable she could complain at that time.

The psychology instructor is no longer employed by the Institute (he left in September 2006), but he agreed to speak with OCR staff. The former psychology instructor recalled having a conversation with the complainant in May or June 2006 about the female instructor wanting the complainant to date her son. He said the complainant believed the female instructor was treating her unfairly because the complainant declined to date the female instructor’s son. The former psychology instructor told the complainant if that was happening, she should report it to the director of education. He told the complainant if she was not satisfied with what the director of education did, she should take the matter to the president. According to the former psychology instructor, the complainant did not say anything to him about any incidents of harassment by the male instructor.

OCR staff asked the former psychology instructor if he told the complainant to think about the consequences before she reported the sexual harassment to the administration. The former psychology instructor said he told the complainant before she reported anything, she needed to be able to back up what she was saying. He told the complainant not to make false allegations.

The former psychology instructor indicated if a student came to him alleging sexual harassment, he would send the student to the director of education. The former psychology instructor informed OCR the Institute provided no formal sexual harassment training for staff, but it was discussed during in-service training.

The complainant said she also informed the student services coordinator about being sexually harassed by the instructors. The complainant stated the student services coordinator told the complainant she would note her complaint and check on it. According to the complainant, the student services coordinator typed the information from the complainant into her computer. The complainant informed OCR she was never told whether the student services coordinator investigated her complaint or took any action on her behalf. The complainant said she did not know whether the Institute had a sexual harassment policy or grievance procedure. The complainant believed incidents of sexual harassment were supposed to be reported to the student services coordinator.

OCR staff spoke with the student services coordinator. She told OCR she had a number of contacts with the complainant, but none raised allegations of sexual harassment. The student services coordinator indicated she made daily notes on her computer of all contacts with students. She agreed to provide her contact notes regarding the complainant from the 2006-07 school year. OCR reviewed the student services coordinator's contact log, but it did not show any contacts in which the complainant reported she had been sexually harassed or that she wanted to file a complaint regarding the sexual harassment.

OCR attempted to interview the male instructor and the female instructor who the complainant alleged sexually harassed her. However, neither instructor is now employed by the Institute. OCR attempted to contact the female instructor at her last known telephone numbers (one number was disconnected) and the female instructor would not return numerous messages left by OCR. The male instructor has left the Kansas City area and attempts to locate him through the Institute and the Internet were unsuccessful.

The Institute's Student Complaint/Grievance Procedure directed students to discuss the matter with the instructor or program manager, then the director of education. If the matter was not resolved satisfactorily with the director of education, the student could submit it to the campus president. If the matter involves an allegation of discrimination, the student should contact the campus president.

### Legal Analysis and Conclusion

The complainant alleged she was subjected to sexual harassment, and the Institute failed to take appropriate action to address the harassment after she reported it.

As noted above, a school will be liable for sexual harassment under Title IX if the school has notice of the harassment and fails to take appropriate steps to end the harassment, remedy its effects, and prevent further incidents of harassment. To determine whether the Institute has violated Title IX by failing to respond appropriately to sexual harassment, OCR must first determine whether sexual harassment occurred and whether the Institute had notice of it.

The available evidence did not establish that sexual harassment occurred or, if it did, that the Institute had notice sexual harassment had occurred. The complainant acknowledged there were no witnesses to the alleged harassment. The male and female instructors accused of harassing the complainant have left the Institute and OCR was unable to locate and interview them. The complainant filed no written complaint or grievance with the Institute alleging sexual harassment. The complainant identified three Institute employees to whom she said she reported the harassment, but one of those, the counselor, cannot be located. The second of them, the student services coordinator, denied the complainant reported any incidents of sexual harassment to her. The third individual to whom the complainant said she reported sexual harassment, the former psychology instructor, denied the complainant reported to him that a male instructor sexually harassed her. The psychology instructor did recall the complainant came to him with a concern that the female instructor was treating her unfairly because the complainant would not date her son. The available evidence indicated the psychology instructor did not believe the complainant was concerned that she was being sexually harassed, but rather the complainant was concerned about unfair treatment by the female instructor in the classroom and in labs. In fact, the psychology instructor directed the complainant to contact the director of education with her concern and, if that did not resolve her situation, to contact the campus president, which was the Institute's grievance process for a complaint that did not involve any allegations of discrimination, including sexual harassment. Regardless, the complainant did not contact either the director of education or the campus president with her concerns as recommended by the instructor. The daily contact log did not include any information reflecting the complainant reported sexual harassment to her counselor, the student services coordinator, the director of education, or the campus president. The available evidence does not establish the complainant was sexually harassed by two instructors at the Institute, or if she was, that the Institute had notice of the sexual harassment.

OCR has determined there is insufficient evidence to support a finding that the Institute violated Title IX by subjecting the complainant to sexual harassment, and failing to take

appropriate action to address the harassment after she reported it. Therefore, OCR is closing this allegation effective the date of this letter.

**Issue: Retaliation**

**Legal Standard**

Title VI's implementing regulation, at 34 C.F.R. § 100.7(e), prohibits recipients from engaging in intimidating or retaliatory acts against any person for the purpose of interfering with any right or privilege secured under the regulation, or because the person has made a complaint or participated in any manner in an investigation or proceeding brought pursuant to the regulation. The Title VI regulation prohibiting retaliation is incorporated, by reference, into the Title IX regulation at 34 C.F.R. § 106.71.

In analyzing retaliation claims, OCR first examines whether 1) the complainant has engaged in a protected activity; 2) the recipient knew about the complainant's protected activity; 3) the recipient took an action adverse to the complainant contemporaneous with or subsequent to the protected activity; and 4) there is evidence of a causal connection between the protected activity and the adverse action. If these elements of a *prima facie* case of retaliation are established, OCR inquires whether the recipient had a legitimate, non-retaliatory justification for its actions. OCR then evaluates any justification the recipient asserts to determine whether it is a pretext for unlawful retaliation.

**Findings of Fact**

The complainant alleged the Institute retaliated against her for engaging in a protected activity (reporting sexual harassment). She alleged that because she reported the sexual harassment, instructors marked her late to class, instructors interfered with and prevented her from completing her surgical labs, and the Institute eventually expelled her from the Institute.

According to the complainant, a male instructor touched her inappropriately and referred to her such as "hon" and "sweetheart" when they were in the classroom alone from May 2005 until March 2007. The complainant also alleged beginning in June 2005 and continuing through the spring of 2006 a female instructor repeatedly approached the complainant about dating the instructor's son.

The complainant alleged she told her counselor, her psychology instructor, and the student services coordinator about the sexual harassment. The complainant stated her counselor is no longer at the Institute and the complainant did not know her last name. Institute officials confirmed the Institute no longer employs the counselor, and indicated the Institute did not know the counselor's whereabouts or have contact information for her. OCR reviewed the

Institute's daily contact log for the complainant, which contained numerous entries by the counselor about the complainant. The entries by the counselor, however, pertained to enrollment issues; there were no notes indicating the complainant reported any incidents of sexual harassment to the counselor.

According to the complainant, she spoke to her psychology instructor about the sexual harassment within six months of the time the harassment began. The former psychology instructor recalled having a conversation with the complainant in May or June 2006 about the female instructor wanting the complainant to date her son. The complainant believed the female instructor was treating her unfairly because she declined to date the female instructor's son. The former psychology instructor told the complainant if that was happening, she should report it to the director of education. He told the complainant if she was not satisfied with what the director of education did, she should take the matter to the president. According to the former psychology instructor, the complainant did not say anything to him about any incidents of harassment by the male instructor.

The complainant stated she also informed the student services coordinator about being sexually harassed by the instructors. The complainant stated the student services coordinator told the complainant she would note her complaint and check on it. According to the complainant, the student services coordinator typed the information from the complainant into her computer. OCR staff spoke with the student services coordinator. She told OCR she had a number of contacts with the complainant, but none raising allegations of sexual harassment. The student services coordinator indicated she made daily notes on her computer of all contacts with students. OCR reviewed the student services coordinator's contact log, but it did not show any contacts in which the complainant reported she had been sexually harassed or that she wanted to file a complaint regarding the sexual harassment.

#### Legal Analysis and Conclusion

As previously noted, OCR will first consider whether there is a *prima facie* case of retaliation. A *prima facie* case of retaliation can be made by showing:

1. the complainant engaged in a protected activity;
2. the Institute had knowledge of the complainant having engaged in the protected activity;
3. the Institute took adverse action against the complainant contemporaneously with or subsequent to the complainant's participation in the protected activity; and
4. there is an inferable causal relationship between the adverse action and the protected activity.

If a *prima facie* case of retaliation exists, OCR examines whether the Institute can articulate a legitimate, nondiscriminatory reason for the action taken against the complainant. If it does, OCR determines whether the proffered legitimate nondiscriminatory reason is a pretext for retaliation.

To determine whether the Institute retaliated against the complainant, OCR applied the retaliation analysis outlined above. OCR first determined whether the complainant participated in a protected activity. Participation in a protected activity occurs when an individual makes a complaint, testifies, assists, or participates in any manner in an investigation, proceeding or hearing conducted under a law OCR enforces. An individual also engages in a protected activity by opposing any act or policy believed to be unlawful under a law OCR enforces.

The available evidence did not establish the complainant's participation in a protected activity, the first element of a *prima facie* case of retaliation. The complainant did not make a complaint, testify, assist, or participate in any manner in an investigation, proceeding or hearing conducted under a law OCR enforces. Rather, the complainant claimed she opposed acts of sexual harassment by reporting the alleged sexual harassment to her counselor, former psychology instructor, and the student services coordinator. The counselor, as noted above, cannot be located. The student services coordinator denied the complainant reported any incidents of sexual harassment to her. The former psychology instructor denied the complainant reported to him that a male instructor sexually harassed her. The psychology instructor did recall the complainant came to him with a concern that the female instructor was treating her unfairly because the complainant would not date her son. The available evidence indicated the psychology instructor did not believe the complainant was concerned that she was being sexually harassed, but rather the complainant was concerned about unfair treatment by the female instructor in the classroom and in labs. The psychology instructor directed the complainant to contact the director of education with her concern and, if that did not resolve her situation, to contact the campus president, which was the Institute's grievance process for a complaint that did not involve any allegations of discrimination, including sexual harassment. The complainant did not report the alleged sexual harassment to either the director of education or the campus president. The daily contact log did not include any information indicating the complainant reported sexual harassment to her counselor, the student services coordinator, the director of education, or the campus president. The available evidence did not establish the complainant engaged in a protected activity by reporting sexual harassment to the Institute.

Because the evidence did not establish the complainant participated in a protected activity, OCR determined there is insufficient evidence to support a finding that the Institute retaliated against the complainant for engaging in a protected activity. Therefore, OCR is closing this allegation effective the date of this letter.

## Other Concerns

### Prompt and Equitable Grievance Procedures

#### Legal Standard

Section 106.8(b) of regulation implementing Title IX requires that recipients adopt and publish a grievance procedure for the prompt and equitable resolution of complaints alleging any action prohibited by the regulation. In determining whether a recipient's grievance procedures meet the prompt and equitable requirement under 34 C.F.R. § 106.8(b), OCR will look at whether the recipient has included elements such as (1) notice to students and employees of the procedures and where to file a complaint; (2) mechanisms for a thorough and objective investigation of complaints including an opportunity for complainants to present evidence; (3) designated timeframes for the investigation and resolution of complaints; (4) notice to complainants of the disposition of complaints; and (5) the right to appeal the findings.

Title IX does not require a school to provide a separate grievance procedure solely applicable to sexual harassment complaints. Rather, Title IX permits the use of a student grievance procedure not designed specifically for Title IX grievances to resolve sex discrimination complaints, including complaints of sexual harassment, as long as the procedures provide notice of their applicability to complaints of sex discrimination and provide prompt and equitable resolution of complaints.

#### Findings of Fact

The Institute provided its complaint and grievance procedure. The Institute does not have a separate sexual harassment policy.

The Institute's complaint/grievance procedure is found in the Student Catalog and states:

#### *Student Complaint/Grievance Procedure*

*Student grievances relating to School matters should first be discussed with the individual Instructor and/or Program Manager and then the Director of Education. If the grievance is not resolved satisfactorily with the Director of Education, it can then be submitted to the Campus President of High-Tech Institute, whose decision is considered final in all matters pertaining to the School.*

*For any grievances relating to Section 504 of the Rehabilitation Act of 1973 (prohibiting discrimination on the basis of disability), Title IX of the Education Amendments*

*of 1972 (prohibiting discrimination on the basis of sex) or the Age Discrimination Act of 1975, the Campus President who is the Section 504 Coordinator should be contacted.*

*The student may expect a grievance to be addressed and/or resolved in a timely manner, within two weeks from the time the grievance is issued at each level. Contact the Campus President at (816) 444-4300.*

*If the complaint cannot be resolved after exhausting the School's grievance procedure, the student may file a complaint with the Missouri Coordinating Board for Higher Education.*

*Schools accredited by the Accrediting Commission of Career Schools and Colleges of Technology must have a procedure and operational plan for handling student complaints. If a student does not feel that the School has adequately addressed a complaint or concern, the student may consider contacting the Accrediting Commission. All complaints considered by the commission must be in written form, with permission from the complainant for the Commission to forward a copy of the complaint to the School for a response. The complainant will be kept informed as to the status of the complaint as well as the final resolution by the Commission. Please direct all inquiries to: Accrediting Commission of Career Schools and Colleges of Technology, 2101 Wilson Blvd., Ste.302, Arlington, VA 22201, 703-247-4212.*

*A copy of the Commission's Complaint Form is available at the School and may be obtained by contacting the Director of Education.*

OCR has carefully reviewed the Institute's grievance procedure in the student catalog. The procedure is confusing regarding where and how to file a complaint. Students are directed to discuss their complaint/grievance with their instructor and or the program manager, and then the director of education. The grievance can then be submitted to the campus president. If the complaint involves disability discrimination, sex discrimination, or age discrimination, the president should be contacted. The procedure does not indicate whether students alleging discrimination must first discuss their concern with an instructor or program manager before contacting the president, or give guidance on how the president should be contacted or the grievance presented to the president. The procedure also does not specify whether it is applicable to complaints of discrimination on the basis of race, color, or national origin.

The grievance procedure does not provide a mechanism for a thorough and objective investigation of complaints including an opportunity for complainants to present evidence. The procedure provides no guidelines for conducting an investigation including the scope of the investigation, identification of witnesses, confidentiality, documentation, or an opportunity for the complainant to present evidence.

The grievance procedure does not designate timeframes for the investigation and resolution of complaints at each stage of the process. It merely states a student may expect a grievance to be addressed/and or resolved in a timely manner, within two weeks from the time the grievance is issued at each level.

The grievance procedure does not require notice to complainants of the disposition of complaints.

The grievance procedure does not provide a right to appeal the findings. If students are to make their grievance alleging discrimination directly to the president, then there is no appeal provided at the Institute for them because the procedure states the president's decision is final. Although the procedure provides for appeals to the Missouri Coordinating Board of Higher Education and the Accrediting Commission of Career Schools and Colleges of Technology, OCR questions the authority of those two organizations to investigate and resolve sexual harassment complaints pursuant to federal law.

#### **Legal Analysis and Conclusion**

As noted above, the regulation implementing Title IX at § 106.8(b) requires that recipients adopt and publish a grievance procedure for the prompt and equitable resolution of complaints alleging any action prohibited by the regulation. In determining whether the Institute's Title IX grievance procedures meet the prompt and equitable requirement under 34 C.F.R. § 106.8(b), OCR considered whether the Institute has included elements such as (1) notice to students and employees of the procedures and where to file a complaint; (2) mechanisms for a thorough and objective investigation of complaints including an opportunity for complainants to present evidence; (3) designated timeframes for the investigation and resolution of complaints; (4) notice to complainants of disposition of complaints; and (5) the right to appeal the findings.

OCR has determined that the College's current policies and procedures applicable to complaints of discrimination under Title IX do not provide prompt and equitable resolution for complaints. The notice to students of where and how to file a complaint is confusing. There is no provision for a thorough and objective investigation of complaints including an opportunity for complainants to present evidence. The procedure provides no guidelines for conducting the investigation including the scope of the investigation, identification of witnesses, confidentiality, documentation, or an opportunity for the complainant to present evidence. The grievance procedure does not designate timeframes for the investigation and resolution of complaints at each stage of the process. The grievance procedure does not provide notice to complainants of the disposition of complaints, or an appropriate appeal process.

Based on the above, OCR has determined the Institute has failed to provide grievance procedures for the prompt and equitable resolution of Title IX complaints and is in violation of the regulation implementing Title IX at 34 C.F.R. § 106.8(b).

Non-Discrimination Policy and Title IX Policy

**Legal Standard**

- Under the Section 504 regulation at 34 C.F.R. § 104.7(a), a recipient that employs 15 or more persons must designate at least one person to coordinate its efforts to comply with the Section 504 regulation. In addition, the Section 504 regulation at 34 C.F.R. § 104.8(b) states if a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees, it must include in those materials or publications a statement of the policy of nondiscrimination on the basis of disability. The Section 504 regulation at 34 C.F.R. § 104.8(a) also requires a recipient to identify the individual designated to coordinate its efforts to comply with Section 504 in its notice of nondiscrimination.
- The regulation implementing Title IX at 34 C.F.R. § 106.8(a) requires recipients to notify its students and employees of the name, office address, and telephone number of the individual responsible to coordinate its efforts to comply with Title IX.
- The regulation implementing the Age Act at 34 C.F.R. § 110.25(a) requires recipients to identify for their beneficiaries the individual responsible for coordinating their efforts to comply with the Age Act by name or title, address, and telephone number.

**Findings of Fact**

The Institute has a nondiscrimination policy in its catalog which states:

*High Tech Institute offers equal opportunities, without distinction or discrimination because of race, color, sex, religion, age, national origin, physical or mental handicap, or Vietnam Era Veteran status, in any of its academic programs or activities, or in any of its employment practices.*

The Institute's student application does not contain any notice of nondiscrimination.

**Legal Analysis and Conclusion**

OCR has carefully reviewed the Institute's Notice of Nondiscrimination. The Institute has a Notice of Nondiscrimination in the student catalog, but it does not identify a Title IX coordinator, a Section 504 coordinator or an Age Act coordinator. The Institute's application does not have a Notice of Nondiscrimination at all. By failing to have a notice

of nondiscrimination in appropriate publications and failing to designate and identify coordinators for Title IX, Section 504, and the Age Act respectively in its Notice of Nondiscrimination, the Institute is in violation of the Section 504 regulation at 34 C.F.R. §§ 104.7(a), 104.8(a) and (b), 34 C.F.R. § 106.8(a), and 34 C.F.R. § 110.25(a).

#### Notice Accessible Services, Activities, and Facilities

##### **Legal Standard**

The Section 504 regulation at 34 C.F.R. § 104.22(f) states that a recipient shall adopt and implement procedures to ensure that interested persons, including persons with impaired vision or hearing can obtain information as to the existence and location of services, activities, and facilities that are accessible to and usable by handicapped persons.

##### **Findings of Fact**

OCR reviewed the Institute's catalog and application for admission. Those documents do not include a notice to ensure interested persons can obtain information as to the existence and location of services, activities, and facilities that are accessible to and usable by handicapped persons.

##### **Legal Analysis and Conclusion**

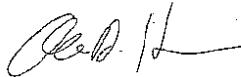
The Institute has not ensured that all interested persons, including applicants, can obtain information regarding the existence and location of services, activities, and facilities that are accessible to and usable by handicapped persons in either its student catalog or its application for admission. The Institute is not in compliance with the Section 504 regulation at 34 C.F.R. § 104.22(f).

During telephone conversations with OCR, the Institute expressed a desire to enter into a Resolution Agreement that would resolve the compliance concerns OCR has identified above. On November 6, 2007, the Institute voluntarily submitted the enclosed Resolution Agreement which, once implemented, will resolve the identified compliance issues. Consequently, OCR considers this complaint resolved as of the date of this letter. OCR will monitor the Institute's implementation of the Resolution Agreement. Failure to satisfy the terms of the Resolution Agreement will result in further action by OCR.

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OCR is committed to prompt and effective service. If you have any questions, you may contact Patricia Boyd, Equal Opportunity Specialist, at (816) 268-0554, or (877) 521-2172 (telecommunications device for the deaf), or by email at Patricia.Boyd@ed.gov.

Sincerely,



Alan D. Hughes  
Supervisory Attorney

Enclosure

cc: Diane Gilmore, Vice-President,  
High Tech

## RESOLUTION AGREEMENT

High-Tech Institute

07072055

The High-Tech Institute (Institute), Kansas City, Missouri, submits this Resolution Agreement (Agreement) to the U.S. Department of Education, Office for Civil Rights (OCR), to resolve this complaint. This complaint is resolved pursuant to Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 United States Code (U.S.C.) § 794, and its implementing regulation, 34 Code of Federal Regulations (C.F.R.) Part 104; Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131, and its implementing regulation, 28 C.F.R. Part 35; Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681, and its implementing regulation, 34 C.F.R. Part 106; and the Age Discrimination Act of 1975 (Age Act), 42 U.S.C. § 6101, and its implementing regulation, 34 C.F.R. Part 110.

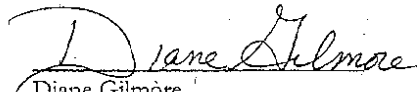
This Agreement addresses the Institute's responsibility to develop and implement an appropriate grievance procedure that is applicable to complaints of discrimination on the basis of sex, including complaints of sexual harassment. The Agreement contains provisions that address the Institute's obligation to inform persons about their protection against discrimination on the bases of sex, race, color, national origin, age, and disability; to designate individuals to coordinate the Institute's civil rights compliance efforts; and to publish its notice of nondiscrimination as required by the regulations implementing Section 504, Title II, Title IX, and the Age Act. The Agreement also contains provisions that address the Institute's obligation to adopt and implement procedures to ensure that interested persons can obtain information as to the existence and location of services, activities, and facilities that are accessible to and usable by handicapped persons as required by the regulations implementing the Section 504 regulation at 34 C.F.R. § 104.22(f). By entering into this Agreement, the Institute does not concede that it is now or has been out of compliance with or in violation of the herein mentioned laws, rules and regulations.

Specifically, the Institute agrees to take the following actions:

1. By **June 2, 2008**, the Institute will develop and adopt a policy prohibiting sexual harassment and a grievance procedure for complaints of discrimination on the basis of sex, including complaints of sexual harassment. The Institute may consult with OCR for technical assistance in developing its policy and grievance procedure. The Institute will designate an individual to investigate complaints involving discrimination on the basis of sex, including complaints of sexual harassment. The grievance procedure must also include the following:
  - a. A statement that the grievance procedure is applicable to complaints alleging discrimination on the basis of sex, including allegations of sexual harassment;

- b. Notice to students of the process for filing a grievance, including who to contact and how to initiate a grievance. The grievance procedure will not require students alleging harassment to confront their alleged harasser in any manner or for any reason prior to initiating a formal grievance;
  - c. A requirement that all complaints will be promptly and thoroughly investigated (including an opportunity for the grievant to provide evidence) and decided within reasonable designated time frames at each stage of the grievance process;
  - d. Provisions for maintaining the confidentiality of the person who files a complaint;
  - e. Notice to the grievant of the disposition of the grievance at each stage of the process;
  - f. A fair and equitable appeal process;
  - g. Notice that retaliation against a person who files a complaint of discrimination, including sexual harassment, or persons who participate in related proceedings is prohibited; and
  - h. Assurance that if sexual harassment is established, appropriate corrective and remedial actions will be taken.
2. By **June 2, 2008** the Institute will submit to OCR a copy of its sexually harassment policy and grievance procedure applicable to complaints of discrimination on the basis of sex, including complaints of sexual harassment.
  3. By **August 1, 2008** the Institute will disseminate its sexual harassment policy and Title IX grievance procedure to all students and employees by:
    - a. Publishing the sexual harassment policy and grievance procedure in the catalog, and student and employee handbooks; and
    - b. Posting the sexual harassment policy and grievance procedure in prominent locations at its facility.
  4. By **August 1, 2008** the Institute will submit to OCR a copy of the catalog, and student and employee handbooks that contain its sexual harassment policy and grievance procedure. The Institute will also submit to OCR photographs and descriptions of the location the sexual harassment policy and grievance procedure are prominently displayed at the Institute.

5. As such documents are published, but no later than **August 31, 2008** the Institute will publish its notice of nondiscrimination, which includes the identity and contact information for the individual(s) designated to coordinate the Institute's compliance with Section 504, Title IX, and the Age Act, in an easily visible location in publications containing general information about the Institute, including student and employee handbooks, announcements, bulletins, catalogs, application forms and other documents that it makes available to students, parents, employees, and other interested persons.
6. By **December 31, 2008** the Institute will submit to OCR copies of publications containing general information about the Institute, including student and employee handbooks, announcements, bulletins, catalogs, application forms and other documents that it makes available to students, parents, employees, and other interested persons, which contain the notice of nondiscrimination.
7. By **September 1, 2008** the Institute will provide training for students and employees regarding the Institute's sexual harassment policy and grievance procedure.
8. By **September 5<sup>th</sup>, 2008** the Institute will submit to OCR documentation that evidences completion of Item 7 of this Agreement. Such documentation should include the date(s) of the training session(s), an outline on the content of the training, the name and position title of the trainer(s), and a sign-in sheet identifying the participants at the training session.
9. By **October 3, 2008** the Institute will provide notice to interested persons of its procedures regarding accessible services, activities, and facilities as required by the Section 504 regulation at 34 C.F.R. § 104.22(f).
10. By **October 10, 2008** the Institute will provide OCR with written documentation that item #9 has been completed.

  
Diane Gilmore  
Vice-President  
High-Tech Institute

Date

11-06-07