



DEPARTMENT OF EDUCATION

REGION VI
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DENVER, COLORADO 80204-1582

JUL 8 2002

OFFICE OF THE REGIONAL DIRECTOR
OFFICE FOR CIVIL RIGHTS

Mr. Tony Caggiano
President
Westwood College of Technology
7350 North Broadway
Denver, Colorado 80221

Re: Westwood College of Technology
Case Number 08022009

Dear President Caggiano:

On November 6, 2001, the U. S. Department of Education, Office for Civil Rights (OCR), received a complaint of discrimination filed against Westwood College of Technology (College). The complainant, ^{(b)(7)(C)} [redacted] alleged that the College discriminated against her on the basis of sex and race (Asian). Specifically, the complainant alleged that a staff member subjected her to sexual harassment. The complainant also alleged that the College failed to process her complaint of sexual harassment according to its usual procedures and that this also constituted discrimination based upon her race.

OCR conducted its investigation upon the authority of Title VI of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972. Title VI prohibits discrimination on the basis of race, color, or national origin in programs and activities that receive federal financial assistance from the U. S. Department of Education. Title IX prohibits discrimination on the basis of sex in such programs. The College is a recipient of federal financial assistance from this Department.

OCR's investigation included a review of documents pertinent to the issues of the complaint, including documentation provided by the complainant and the College. OCR also conducted interviews with College personnel, the alleged offending College instructor, the complainant and her husband, and individuals identified by the complainant. The bases for our determination are summarized below.

INVESTIGATION

Sexual Harassment

OCR has defined sexual harassment as unwelcome conduct of a sexual nature. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal or 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 school's programs. Sexual harassment of a student is, therefore, a form of sex discrimination prohibited by Title IX. OCR also considers a variety of factors to determine if a hostile environment has been created, i.e., if sexually harassing conduct by an employee, another student, or a third party is sufficiently serious that it denies or limits a student's ability to participate in or benefit from the College's program based on sex.

When OCR is asked to investigate or otherwise resolve incidents of sexual harassment of students, including incidents caused by employees, OCR will determine whether: (1) the school has a disseminated policy prohibiting sex discrimination under Title IX and effective grievance procedures (2) the school appropriately investigated or otherwise responded to allegations of sexual harassment, and (3) the school has taken immediate and effective corrective action responsive to the harassment, including effective actions to end the harassment, prevent its recurrence, and as appropriate remedy its effects.

The College has developed a procedure for the investigation of allegations of sexual harassment for employees which indicates that "Any employee who believes that he or she is being harassed should promptly report the conduct to: (1) employee's immediate supervisor and/or (2) employee's next level supervisor and/or (3) Human Resources representative and/or (4) College President/Executive Director. It is the responsibility of each supervisor within his or her area of control to report complaints in writing to the Human Resources representative and/or the College President/Executive Director. The Company's parent company, Alta Colleges, Inc., will conduct a prompt and thorough investigation of all the circumstances surrounding alleged incidents of sexual harassment brought to its attention...."

OCR determined that the College does not have a similar policy regarding the allegations of sexual harassment of students. Instead, the College provided OCR with a copy of its Student Complaint/Grievance Procedure, which indicates "if a student has a nonacademic issue or concern, the first person with whom the student should talk is the manager of the department where the concern is focused. Talking to the Director of Student Services is next. The Director will attempt to coordinate a mutual and satisfactory resolution with the individuals or departments involved with the issue or concern. If still not satisfied, the student can take the next step and initiate a written grievance to the Executive Director. If still no resolution, the student may take their written and signed grievance to subsequent levels within the College."

The complainant was a full-time computer-programming student at the College effective May 30, 2001. The complainant alleged that on three separate occasions between August 8 through 29, 2001 her computer programming instructor stood behind her, put his hand on her shoulder, squeezed it, and said "you're doing a good job", or simply "good job". On the third occasion, she stated she felt his hand go lower and closer to her breast. She stated she felt very uncomfortable and did not know what to do. On another occasion, the complainant testified that she "did not make a big deal of the incident" when it occurred and does not think anyone around her noticed. The complainant stated that she reported the sexual harassment to her husband (an employee of the College and Program Director

of the College) on August 31, 2001 and asked him to do something about it. The complainant stated that on September 4-5, 2001, she sought medical attention from the stress of the incidents and failed to return to the College.

The complainant, and her husband (Program Director), also stated that the Director of Education did not investigate her complaint of sexual harassment because he is racist. The complainant provided affidavits from three former employees who stated the Director made racial remarks about all races, including Blacks, Hispanics, Asians, Arabs, Native Americans, and Vietnamese. OCR's interviews with these individuals confirmed their affidavits. OCR also conducted interviews with two other former employees identified by the complainant who also reported that the Director made inappropriate racial remarks.

OCR was unable to make contact with the other former employees and four students whom the complainant stated could attest to racial and sexual problems with the Director. The College was unable to locate telephone numbers or documentation to support that any of these individuals filed racial or sexual complaints against the College. One former employee who was interviewed by OCR stated she filed an unrelated complaint with an outside agency involving a different set of College individuals.

The complainant requested that OCR interview students in her computer programming class. These students reported they did not see the instructor touch the complainant. One student in particular who sat next to the complainant stated the instructor often walked around the class helping students but he did not witness the instructor touch the complainant nor did the complainant ever inform him about any touching incidents. This student stated he (student) personally assisted the complainant in class when she was having difficulty. He also reported that he has witnessed the instructor pat male and female students on the shoulder or give them a handshake as a form of praise. There were no witnesses to the alleged sexual harassment.

On September 7, 2001, the complainant's husband (Program Director) verbally informed the Director of Education and requested that action be taken on this issue. On September 10, 2001, he also allegedly informed the Assistant Director of Education who told the complainant's husband to contact the College President. On September 24, 2001, when the Director of Education still had not responded, the complainant's husband wrote a letter to the College President outlining the complaint and the fact that he had not received any feedback on his complaint from the Director of Education. The President did not respond to this letter. Also on this date, the complainant's husband received a termination of employment letter for a matter unrelated to this complaint.

The computer-programming instructor stated to OCR that he did not touch the complainant. He stated that he likes to shake students' hands or used an open-handed clap on the shoulders of male and female students as a gesture of acknowledging good work. He stated this has always been in full view of other students and that he has never received any complaints. The instructor maintained that the complainant's husband and the complainant are retaliating against him because on September 6, 2001 he (instructor)

filed a formal complaint against the complainant's husband (Program Director) alleging profanity, harassment, abusive behavior and general inappropriate conduct.

The Director of Education reported that the complainant's husband told him that the instructor had inappropriately touched his wife but did not go into specifics. He stated that he advised the complainant's husband to contact the Human Resource Department. The Director of Education reported he then spoke with the instructor, who admitted touching students as a form of praise but did not admit to touching the complainant. The Director of Education stated that he told the instructor if he was doing anything such as was reported by the complainant's husband, he was to stop immediately. The instructor confirmed this conversation in his interview with OCR. The Director of Education also stated that when the President of the College gave him the complainant's September 24, 2001 letter he filed it away and did not take any action on it.

The Assistant Director of Education could not recall a conversation with the complainant's husband.

The College President reported that he did not respond to the September 24, 2001 letter and gave it to the Director of Education for a response. He stated his knowledge of the sexual harassment incident was what was reported to him by the Director of Education.

The College's Senior Human Resources Manager reported that during the period September through November 2001 she was investigating a complaint filed by the Computer Programming Instructor against the complainant's husband (Program Director). The Instructor had alleged that the complainant's husband was creating a hostile work environment characterized by racism and sexism. The Human Resources Manager stated that during the course of her investigation on November 27, 2001, she was talking with the complainant's husband. He informed her that the Computer Programming Instructor sexually harassed his wife (complainant). The Human Resources Manager stated that this was the first time the complainant's husband (Program Director) had mentioned the sexual harassment incident. She stated she asked him about the accuracy of his statement and he admitted he was exaggerating somewhat, but he did not request an investigation into the matter from her.

Interviews with College personnel confirmed that the instructor does pat students on the back and shakes their hands as a form of praise and that he sometimes does this to College personnel.

OCR's review of the College's complaint log for the last two years established there were no student complaints of racial or sexual harassment. OCR did establish that one other Asian student filed a complaint concerning a Novell class and requested a refund. This complaint was investigated from its inception and was resolved.

OCR is unable to establish that the allegation of sexual harassment (unwelcome touching) occurred as reported by the complainant. Interview statements and a review of College records did not reveal any charges of sexual harassment filed against the instructor by

other College personnel and students. College personnel and students who were interviewed by OCR stated the instructor is considered to be a very good teacher and is well liked.

Although OCR could not establish that the computer programming instructor sexually harassed the complainant, OCR did determine that the College has no sexual harassment policy regarding the sexual harassment of students that conforms to the OCR requirements. Specifically, the College did not appropriately investigate or otherwise respond to the complainant's allegation of sexual harassment and therefore took no action responsive to the complainant's allegation. As a result of OCR's investigation, the College expressed an interest in correcting this by entering into the attached Commitment to Resolve (CTR).

On July 1, 2002, OCR received the College's enclosed written CTR. This allegation is being closed subject to the successful completion of the CTR, dated July 1, 2002, which will be monitored by OCR. If the College does not complete the CTR as scheduled, OCR will immediately reopen this allegation and resume the investigation.

Racial Discrimination

The complainant alleged that the College failed to process her complaint of sexual harassment according to its usual procedures and this also constituted discrimination based on race. Specifically, the complainant and her husband alleged that because the Director of Education is racist he did not investigate her complaint.

OCR used a different treatment analysis to determine whether the College subjected the complainant to discrimination on the basis of race (Asian). The different treatment analysis contains the following elements:

1. Determine what action the College took against the complainant;
2. Determine whether the College followed its policies and procedures; and
3. Compare the complainant's treatment to similarly situated students;
4. If the College did not follow its policies, or if the complainant was treated differently than other students, then determine whether there is a legitimate, non-discriminatory reason for the different treatment; and
5. Determine whether the College's reason is a pretext for discrimination.

In response to the first element, OCR's investigation determined that the College did not take appropriate action when it was informed of the sexual harassment complaint. The Director of Education reported that he informed the Program Director to contact the Human Resources Department and then he spoke to the instructor about the matter. The complainant's husband (Program Director) reported that he had made an official verbal

complaint of sexual harassment to the Director of Education on behalf of his wife (complainant) and asked for advice and that action be taken. The complainant's husband reported that he did not receive any feedback from the Director. OCR's investigation established that the Director of Education did discuss the allegation of sexual harassment with the computer-programming instructor and directed him to not touch the complainant. Further, the College had no policies and procedures for student complaints of sexual harassment. As a result, OCR could not establish whether or not the College followed its policies and procedures.

OCR could not establish that there were other students similarly situated to the complainant within the College. The complainant's circumstances in this complaint were separate and distinct from the other student complaints filed at the College during the past two years. The other complaints included dissatisfaction with class instruction, housing, career development, misleading advertising, inadequate placement, refunds, etc. There were no complaints of sexual harassment. As stated above, there was one other Asian student who filed a complaint on a different issue and the College conducted an investigation into the matter and resolved the issue.

In spite of statements by some former employees about racial remarks purported to have been made by the Director of Education, OCR could not establish that the College, in particular the Director of Education, failed to investigate the complaint of sexual harassment because the complainant was Asian. Specifically, OCR was unable to establish that the College did not follow its policies and procedures for student complaints of sexual harassment, because there were no policies and procedures, or that the complainant was treated differently than other similarly situated students, because there were no other similarly situated students. OCR determined that the College did not appropriately investigate the complaint of sexual harassment, but there is insufficient evidence to support that this was due to the complainant's race. Accordingly, OCR is closing the investigation of this allegation effective the date of this letter.

Individuals filing a complaint or participating in an investigation are protected under Federal law against harassment, retaliation, or intimidation by 34 C.F.R. Section 104.61, as it incorporated 34 C.F.R. Section 100.7(e) and 28 C.F.R. Section 35.134.

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

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This concludes OCR's investigation of the complainant's allegations and we are closing this investigation effective the date of this letter. We want to thank your staff, in particular Ms. Jeanne Leasure, Human Resources Senior Manager, for all of their assistance throughout the course of this investigation. If you have any questions, please contact me at (303) 844-4586 or Patricia Perez, Equal Opportunity Specialist, at (303) 844-4540.

Sincerely,


J. Aaron Romine
Supervisory Team Leader

Encl: Commitment to Resolve

Copy to: Ms. Jeannie Leasure, Senior Manager, Human Resources

Mr. Edwin Aro, Attorney

*Team D*RECEIVED
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COMMITMENT TO RESOLVE

This Commitment to Resolve ("CTR") is between the U.S. Department of Education, Office for Civil Rights ("OCR") and Westwood College of Technology - Denver North Campus (the "College"), and is entered into in connection with the resolution of case number 08022009 (the "Charge").

The OCR recognizes and agrees that while this Commitment to Resolve arose from the Charge, the OCR's investigation found insufficient evidence to conclude that the complainant had been subject to any form of discrimination or harassment. This commitment therefore does not constitute any admission of wrongdoing by any party, but rather reflects the voluntary agreement of the OCR and the College to improve the understanding of students, staff and administrators of the College's commitment to equal educational opportunity and the prohibition of illegal harassment. To that end, the College commits to the following actions:

1. The College has implemented a policy that prohibits certain forms of illegal harassment, including sexual harassment (the "Policy"). The College will appoint a committee to review the Policy and any related grievance procedure for students and to make recommendations regarding the effective implementation of the Policy and procedure. The review will include consideration of the effectiveness of the Policy and grievance procedure in ensuring the prompt and effective resolution of sexual harassment complaints, including the identification of specific timelines, designation of responsibility and accountability for complaint investigations. The committee will make such changes to the Policy and grievance procedure as the Committee deems necessary to promote the prompt and effective resolution of sexual harassment complaints filed by students.

The College will provide a copy of its revised Policy and grievance procedure to OCR by December 31, 2002.

2. The revised Policy and grievance procedure will be publicized to the students and staff of the College in a manner consistent with the way in which the College typically disseminates other important College policies, including publication in any student handbooks or other materials generally distributed to the students, in-house publications and through bulletin board materials, and/or publication by means of the College's web site.

The College will provide documentation of the publication of these materials to OCR by December 31, 2002.

3. The College will provide mandatory sexual harassment training for all administrators, staff, and teachers. The training will, at a minimum explain the rights guaranteed under the Title IX and the right of students and staff to work

and learn in an environment free from sexual harassment and sex discrimination. The training will cover, at a minimum, teacher-to-teacher, teacher-to-student and student-to-student sexual harassment, how to report it, how the College will handle complaints. The training will give the identity of the appropriate officials to whom harassment should be reported, and describe what steps will be taken by these officials to investigate allegations of sexual harassment. The training will also specifically address prohibition of retaliation, by any teacher, administrator, staff member or student for reporting harassment.

The College will complete the training by December 31, 2002 and will provide a training agenda and attendance list to OCR by December 31, 2002.

4. The College will maintain a logbook to document the receipt of all complaints by any student alleging sexual harassment at the College's Denver North Campus. The logbook will include information identifying the individual receiving the complaint, the date of the complaint, the resolution of the complaint and the date of resolution. The College will also maintain records relating to each such complaint, including interview notes and documents concerning resolution of the complaint. The College will maintain the logbook and other complaint-related records for no less than 3 years.

The College will provide a copy of the then-current logbook to OCR as of December 31, 2002 and June 30, 2003. For no less than three years, the College will retain copies of all documents relating to complaint receipt and resolution for review by OCR upon prior notice and in OCR's reasonable discretion.

5. If the College complies with the foregoing requirements, this Agreement shall terminate as of the second anniversary of its execution by the College.



President

Westwood College of Technology - Denver North Campus

7/1/02
Date