



DEPARTMENT OF EDUCATION

REGION VIII
FEDERAL OFFICE BUILDING
1244 SPEER BLVD, SUITE #310
DENVER, COLORADO 80204-3582

OFFICE OF THE REGIONAL DIRECTOR
OFFICE FOR CIVIL RIGHTS

Dr. Sharmon Woods, Director
The Art Center Design College
2525 North Country Club Road
Tucson, Arizona 85716

Re: The Art Center Design College
Case No. 08022070-B

Dear Dr. Woods:

The U.S. Department of Education, Office for Civil Rights (OCR) has completed its investigation of case number 08022070-B, which we received on August 27, 2002. The complainant alleged that after he filed an internal racial discrimination complaint, the Art Center Design College (College) retaliated against him. Specifically, the complainant alleged that he was subjected to different treatment for an in-class presentation and he received lower grades in the third quarter. The complainant also alleged that the College does not have a complaint process for sexual harassment complaints filed by third parties.

OCR is a law enforcement agency responsible for enforcing Federal civil rights laws. OCR investigated this complaint pursuant to Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, or national origin, and Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex, in education programs and activities.

In reaching a compliance determination regarding the allegations, OCR reviewed documents submitted by the complainant and the College. OCR also conducted interviews with the complainant and College staff. Using established legal approaches to determine whether discrimination occurred, OCR found that the College did not retaliate against the complainant and does have appropriate grievance procedures pursuant to Title IX.

COMPLAINT ANALYSIS

Allegation #1: Retaliation

The complainant alleged that after he filed an internal racial discrimination complaint against a College instructor, the College retaliated against him. Specifically, he alleged that he was subjected to different treatment for an in-class presentation and he received lower grades in the third quarter.

Pursuant to the regulation implementing Title VI, at 34 C.F.R. § 100.7(e), a recipient cannot intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title VI, or because he/she has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing.

When evaluating complaints alleging retaliation, OCR determines whether: (1) the complainant engaged in a protected activity of which the recipient was aware; (2) the complainant suffered an adverse action caused by the College contemporaneous with or subsequent to the protected activity; and (3) there is a causal connection between the protected activity and adverse action. If these steps are established, OCR then determines whether: (4) the College has a legitimate, non-retaliatory reason for its action; and (5) the reason is a pretext for retaliation.

Complaint documents confirm that, in a letter dated March 24, 2002, the complainant filed an internal racial discrimination complaint against the Illustration class instructor. Filing the complaint constitutes a protected activity. As such, OCR determined that the first step of the retaliation analysis was met. The next step was to determine whether the complainant suffered an adverse action caused by the recipient.

Adverse Action #1: In-class presentation.

Complaint records indicate Design class students were required to make a five to ten-minute brochure project presentation on April 11, 2002, the last day of class. The complainant alleged that the instructor called on all the students, except him (the complainant), to make their presentations.

To be actionable, the College's action must significantly disadvantage the complainant as to his status as a student, or his ability to gain the benefits of the program. In the alternative, even if the challenged action did not meet this standard because it did not objectively or substantially restrict the complainant's educational opportunities, the action could be considered to be retaliatory if the challenged action reasonably acted as a deterrent to further protected activity, or if the complainant was, because of the challenged action, precluded from pursuing his discrimination claims.

The Design class instructor stated the assignment objective was to create a "semi-tight color marker rendering of a brochure." Instead, the complainant presented a "digital

print/composite of scanned photographic images." The complainant acknowledged the class received instructions to use color markers and that he chose to do his brochure on the computer. Nevertheless, the instructor stated (and the complainant confirmed) that the complainant did make his presentation after class and received a grade for the project that was higher than his average grade for the course. The complainant generally claims that he was "harmed" because his classmates did not hear his presentation, but stated that the students' comments had no input in the grading of the presentation project. Further, the complainant received a passing "C" grade for the class.

Conclusion

OCR found that the complainant made the presentation to the instructor after class and received a grade. Making his presentation after class did not significantly disadvantage the complainant as a student or affect his ability to gain the benefits of the program, and did not objectively or substantially restrict his educational opportunities. Further, the complainant provided, and OCR found, no evidence that making the presentation after class acted as a deterrent to further protected activity or precluded the complainant from pursuing any discrimination claims. Accordingly, OCR found that making the presentation after class was not harmful or adverse to the complainant.

Adverse Action #2: Lower third-quarter grades.

The complainant alleged that his third-quarter (January 21 through April 11, 2002) instructors gave him lower grades in retaliation for filing a racial discrimination complaint against the Illustration class instructor. During the course of our investigation, the complainant further alleged that all the instructors had changed their records from the beginning of the third quarter to lower his grades.

The student's transcript reflects that he was enrolled in five same-subject classes during the 1st, 2nd, and 3rd quarters. The grades for those classes are as follows:

	1 st	2 nd	3 rd
Advertising	B	A	A
Production	B-	C	D
Computers	C+	B-	C-
Illustration	C	C	C+
Design	C	B+	C

The complainant acknowledged that his third-quarter grade in the Design class was based on his performance. He also stated that he did not finish and turn in his final Computer class project.

The College provided copies of the student's third-quarter grade report for the complainant's classes. The complainant provided copies of the graded third-quarter quizzes and assignments for his classes. The graded documents correspond with the grades recorded on the grade reports.

Conclusion

OCR could not establish that the complainant's grades reflect a pattern of decline in the third quarter, or that the instructors falsified the complainant's grades due to filing an internal grievance. Of the complainant's five same-subject classes, one third-quarter grade was higher than his grades in the first and second quarters, two third-quarter grades were the same as grades received in the first or second quarters, and two third-quarter grades were lower than the grades he received in the first or second quarters. For one of the two classes with lower grades, the complainant acknowledged that he did not submit his final class project. OCR also noted that in the Illustration class, in which the complainant filed the complaint against the instructor, the grade went up in the third quarter. Thus, OCR found no pattern of lower grades that would indicate an adverse action occurred. Accordingly, the College is found to be in compliance with the anti-retaliatory provisions of Title VI.

Allegation #2: Complaint Procedures

The complainant alleged that the College does not have a complaint process for sexual harassment complaints filed by third parties, that is parties who may not have been the object of the alleged sexual harassment but witnessed such behavior. Pursuant to the regulation implementing Title IX, at 34 C.F.R. § 106.8(b), a recipient must adopt and publish grievance procedures providing for the prompt and equitable resolution of student complaints alleging any action prohibited by Title IX.

The College provided OCR with a copy of its sexual harassment policy, as well as a copy of the investigation guidelines for complaints of sexual harassment. The guidelines state: "The Director of the College may receive a complaint directly from the complainant, or from a third party."

The complainant alleged that the Illustration class instructor directed sexual comments at two female students during class. He referenced the action in March 24 and March 31, 2002 letters and verbally informed an associate director of the remarks "around March 23, 2002." The complainant stated that he did not provide specific details regarding the sexual harassment because he believed that the female students should have reported the incident. In a letter dated April 3, 2002, the College asked the complainant to provide details regarding the sexual harassment complaint. The complainant stated he did not respond to the request because he felt the female students did not take the matter

Dr. Sharmon Woods -- Page 5
Case Number 08022070-B

seriously. OCR found that the College collected written statements in August and September about the alleged incident and, according to the written statements from the two female students, they believed that no harassment occurred.

Conclusion

OCR found that the College has a written sexual harassment complaint procedure that allows third party complaints, as evidenced by the College's policies and procedures. Based on complaint documents and telephone interviews with the complainant and College staff, there is no evidence that the complainant intended to file a third-party sexual harassment complaint or that the College denied him the opportunity to do so. In fact, the College did respond to his letters by seeking additional information, which the complainant declined to provide.

OCR is closing this case as of the date of this letter. This letter addresses only the issues discussed above and should not be interpreted as a determination of the College's compliance or noncompliance with Title VI and Title IX in any other respect.

Individuals filing a complaint or participating in an investigation are protected under Federal law from harassment, retaliation, and intimidation. Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will attempt to protect personal information to the extent provided by law.

Thank you for the cooperation extended to OCR staff during the investigation of this case. In addition to resolving complaints of discrimination, OCR encourages voluntary compliance with civil rights laws by providing policy guidance, staff training, and technical assistance. If our office can be of assistance to you or your staff, please call me at 303/844-4524.

Sincerely,

Linda Howard-Kurent
Supervisory Team Leader