



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

NOV 28 2003

REGION IX
Old Federal Building
50 United Nations Plaza, Room 239
San Francisco, California 94102

Dr. Homer Cissell
President
Lassen Community College
Highway 139
Susanville, California 96130

(In reply, please refer to Number 09-03-2112.)

Dear President Cissell:

The U.S. Department of Education, San Francisco Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against Lassen Community College. The complainants¹ alleged that the College has subjected them and others in the Gunsmithing Program (Program) to discrimination on the basis of race or national origin, sex and disability. The issues OCR investigated were:

1. Whether the College allowed a hostile environment on the basis of sex to exist in the Program;
2. Whether the College failed to respond promptly and equitably to notice and complaints concerning sexual harassment in the Program;
3. Whether the College allowed a hostile environment on the basis of race to exist in the Program;
4. Whether the College discriminated against students in the Program on the basis of disability by depriving them of necessary services or academic support, or by creating or allowing a hostile environment on the basis of disability.

OCR investigated the complaint under the authority of Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973 and their implementing regulations. Title VI, Title IX and Section 504 prohibit discrimination on the basis of race, color, national origin, sex and disability in programs and activities operated by recipients of Federal financial assistance. OCR also has jurisdiction as a designated agency under Title II of the Americans with Disabilities Act of

¹ OCR notified the College of the identities of the complainants when the investigation began. We are withholding their names from this letter to protect their privacy.

1990 and its implementing regulation over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The College receives Department funds, is a public education system, and is subject to the requirements of Title VI, Title IX, Section 504 and Title II.

OCR gathered evidence through interviews with the complainants, College administrators, staff, and students, and other relevant witnesses. OCR also reviewed documents and records submitted by the College and the complainants.

OCR concluded that the evidence did not establish a violation of Title VI or Section 504, or the regulations with respect to the issues investigated. OCR did find evidence to establish a violation of Title IX with respect to one issue. The College has submitted a resolution which, when implemented, will resolve the issue. The facts gathered during the investigation, the applicable legal standards, and the reasons for our determination are summarized below.

The Title VI, Title IX and Section 504/Title II regulations provide that students may not be excluded from participation, denied benefits or services, or otherwise discriminated against on the basis of sex, race, color or national origin, or disability, respectively. Under the regulations, schools and colleges have an obligation to ensure that students are educated in a nondiscriminatory education environment. Harassing conduct can deny or limit a student's ability to receive or participate in program benefits, services, or opportunities, in violation of the statutes and regulations.

When sexual, racial, or disability-based harassment is alleged, in determining whether a hostile education environment has been created, OCR examines whether or not the conduct is sufficiently serious to deny or limit a student's ability to participate in or benefit from the school's program. OCR examines all the circumstances including the frequency and severity of the conduct, the age and relationship of the parties, the setting in which the harassment occurred, and whether students have been denied or limited in education benefits or service. If the harassing conduct is carried out by an employee within the context of his or her responsibilities, the school is responsible for the harassment. If the harassment is carried out by student, the school is not responsible for the student's actions, but is responsible for responding promptly and appropriately upon receiving notice of the harassment.

Once a school has notice of harassment, it has a duty to immediately take reasonable steps to stop the harassment and prevent it from reoccurring. OCR will evaluate the appropriateness of the responsive action by examining reasonableness, timeliness and effectiveness.

In addition, the Title IX and Section 504/Title II regulations establish procedural requirements that are important for the prevention or correction of sex and disability-based discrimination, including harassment. These requirements include issuance of a

policy against discrimination and adoption and publication of grievance procedures providing for prompt and equitable resolution of complaints. The regulations also require that recipients designate at least one employee to coordinate compliance with the regulation, including coordination of investigations of complaints alleging noncompliance.

Issue #1: Whether the College allowed a hostile environment on the basis of sex to exist in the Program.

The complaint was filed by a student in the Program (complainant H) and his wife (complainant W), who was a student at the College, but did not take classes in the Program. The complainants alleged that students and staff in the Program had created a hostile environment by posting calendars and pictures depicting partially clothed women, by posting sexually graphic drawings and sexual cartoons and written comments, and by making jokes and verbal comments of a sexual nature in classes and in common Program areas. The complainants stated that they told Program teachers that they objected to these pictures and comments, but that they continued to be tolerated.

Our investigation showed the following:

- OCR confirmed that calendars and other pictures of scantily clad women were posted at times in the shop area of the Gunsmithing Program. Witnesses also described at least one sexually graphic picture drawn on a Program area blackboard. OCR was unable to corroborate the specific verbal comments alleged.
- OCR interviewed nine students, both male and female, in the Program. Many of the interviewees did see "pinup" pictures in the Program shop area. Some of the pictures were in the Gunsmithing Program office and some were placed in the student work areas and in their lockers.
- None of the women interviewed indicated that she was offended by the pictures displayed in the Gunsmithing Program or that she considered the Program environment hostile to her on the basis of sex. None could confirm hearing verbal comments of a sexual nature.
- OCR was unable to identify any women whose participation in the Program was interfered with or limited by the presence of the pictures.

In order to conclude that students have been subjected to a sexually hostile environment in violation of Title IX, OCR must determine that students have been subjected to unwelcome verbal or physical conduct of a sexual nature, which is sufficiently serious to limit their ability to participate in or benefit from the educational

program. The evidence must also show that the hostile environment actually had the effect of limiting students' ability to participate in the program or their receipt of benefits..

Of the conduct alleged, the evidence confirmed the presence of the calendars and pictures, but was unclear as to the sexually explicit comments. The presence of calendars posted in a school program, displaying women's bodies could create a sexually hostile environment. In this case, however, the witnesses we interviewed did not believe that they had been deprived of educational benefits or services because of the display of such calendars. For this reason, OCR concluded that there was insufficient evidence to establish a sexually hostile education environment in violation of Title IX.

Issue #2: Whether the College failed to respond promptly and equitably to notice and complaints concerning sexual harassment in the Gunsmithing Department.

Our investigation showed the following:

- The College has adopted and published policies and procedures concerning complaints of sexual harassment. These policies indicate that students who believe they have been subjected to sexual harassment should contact any employee or faculty member, who must report the complaint to the Director of Human Resources within 24 hours. Although the procedures call for prompt action, they do not include specific timeframes for investigating complaints of sexual harassment or for implementing corrective actions.
- The College has also adopted a Discrimination Complaint Procedure, which is available to any student, employee or job applicant who feels that he/she has suffered unlawful discrimination. While this procedure is not explicitly limited to complaints of discrimination on the basis of disability, complaints are to be filed with the Section 504/ADA Compliance Coordinator. The procedure includes a detailed description of the knowledge and qualifications required of the Section 504/ADA Compliance Coordinator, all of which pertain exclusively to disability discrimination and the specific requirements of Section 504 and the Americans with Disabilities Act. The procedure do not specifically mention any other form of discrimination complaint
- The College publication that describes student rights and responsibilities includes a section on sexual harassment which makes it clear that such harassment is illegal and unacceptable. Individuals who wish to obtain a copy of the Policy Prohibiting Sexual Harassment or to file a complaint are directed to contact the Sexual Harassment Investigator. The Handbook also refers to a general student grievance procedure, which provides for complaints to be filed with the Dean of Student Personnel Services.

- The manager of Purchasing Services was identified to OCR as both the Section 504 coordinator and the individual responsible for conducting sexual harassment complaints. This designation was not reflected in College publications.
- In March 2003, complainant W. reported to an Equal Opportunity Program counselor that another student was sexually harassing her. The counselor met with both complainants and the Dean of Students on March 26, 2003. The Dean conducted some interviews concerning the allegation, and obtained evidence suggesting that the complainant had not been sexually harassed. He also contacted the police, who investigated the complainant's claim that the other student was carrying a loaded gun. The police concluded that the gun claim was unfounded. The manager of Purchasing Services (the individual identified to OCR as the sexual harassment complaint coordinator) was not notified or involved in this process.
- While the Dean was reviewing the complainants' sexual harassment claim, complainant W. provided him with a letter indicating that she had been prescribed a combination of medications that may have affected her behavior and contributed to the other student's alleged sexual harassment. The letter did not explicitly indicate that the complainant intended to withdraw her allegations. The Dean stated that he took no further action to complete his investigation of the complaint or to inform the complainant that he considered the issue closed.
- The complainants stated that they also had informed program instructors that they objected to the pictures of women in the Gunsmithing area. Two other male students provided information about the pictures to College administrators, including the College president, during April 2003.
- Neither the director of Human Resources nor the manager of Purchasing Services was notified about the complainant's individual sexual harassment allegations.
- After OCR informed the College about this complaint, the manager of Purchasing Services was notified for the first time that concerns had been raised about a sexually hostile environment in the Gunsmithing Department. On or about May 29, 2003, she made an unannounced visit to the Department, met with Department staff and removed several pictures from the Department walls. The evidence indicates that pictures of women have not been posted in the area since that time.
- OCR interviewed several administrators at the College. Each administrator had some knowledge about the College's policies and procedures on sexual harassment. However, their understanding about the use specific grievance procedures and how the procedures should be implemented for sexual harassment complaints was inconsistent. College staff interviewed by OCR admitted that training on the College policy and procedures has been done sporadically in the past.

In order to provide a prompt and equitable procedure for resolving complaints of sex discrimination, a recipient must provide notice to staff, students and administrators of the existence of the procedure and the individual(s) to whom complaints should be addressed or referred. Staff and administrators should be familiar with their own responsibilities under the procedure. After reviewing the various College procedures in place during the spring semester of 2003, OCR concluded that they were so confusing as to prevent equitable resolution of complaints.

An individual seeking to file a complaint, or an employee who was informed of a complaint, could not reasonably determine whether he or she should approach the Director of Human Resources, the Section 504/ADA coordinator, or the Dean of Student Personnel Services. While the manager of Purchasing Services had apparently been designated as the individual responsible for investigating complaints of discrimination – at least insofar as they concerned discrimination on the basis of disability or sexual harassment – this information was not included in any College publication provided to OCR or noted on the College web site.

In this case, the lack of clear procedures resulted in incomplete and delayed responses to the complaints and allegations of sexual harassment raised by the complainants and others concerning the Gunsmithing department. The Section 504/Sex Harassment Coordinator was not involved in the resolution of these complaints or concerns until after OCR informed the College about the complaint. Instead, the Dean of Students began a preliminary investigation, and then stopped the investigation in response to a letter from the complainant concerning her medical status and its possible effect on the alleged harassment, without determining whether it was the complainants' intention to withdraw the complaint. The Dean kept no notes of his investigation, and issued no notice to the complainant of what he found.

Based on this evidence, OCR concluded that the College had failed to adopt and implement an equitable procedure for responding to complaints of discrimination on the basis of sex, in violation of Title IX and the regulations. On October 23, 2003, OCR informed the College of its findings regarding the allegations contained in this complaint. College administrators informed OCR that grievance procedures and notification of such procedures are currently being revised to address many of the concerns raised in this investigation. The College agreed to implement the enclosed Resolution Agreement to address the compliance issues outlined above pertaining to the equitable resolution of sexual harassment complaints. OCR will monitor the implementation of the Agreement.

Issue 3: Whether the College has allowed a hostile environment on the basis of race to exist in the Program.

Our investigation showed the following:

- The complainants stated that one of the Gunsmithing program instructors made derogatory comments about the national origins of two of the students in the program. They also alleged that students in the program use racially derogatory terms and make racist jokes among themselves and in the presence of instructors.
- OCR interviewed the instructor who was said to have made racially derogatory comments. The instructor, who is no longer employed in the program, admitted that he made jokes that he characterized as "racist," and conceded that he may have commented on the ethnicities of some students, but he insisted his comments were not done in seriousness, but in a friendly and teasing way. Further, he stated that no one ever complained to him about his behavior. While students confirmed that this instructor used "rough" language, none could identify specific racially derogatory comments.
- Most of the students interviewed stated that they had not heard any students using racially derogatory terms. One student reported hearing other students using racial epithets when referring to African Americans, and stated that instructors had heard these remarks and not stopped them. The instructors interviewed denied having heard these epithets.
- OCR was unable to identify any students whose participation in the program was limited or affected by the allegedly hostile environment.

The severe, pervasive or persistent use of racially derogatory language by students and/or instructors in an educational program can have the effect of creating a racially hostile environment. There was some evidence showing that remarks and jokes referring to race were made. In this case, however, the evidence did not indicate that there were students who considered the environment hostile to them on the basis of race or national origin, or whose ability to participate in the program was affected by the racial comments that were made. Based on the facts presented, OCR is unable to establish sufficient evidence that a hostile environment on the basis of race existed in the Program. Therefore OCR concludes that the College did not violate Title VI or the regulation with respect to this allegation.

Issue 4: Whether the College has discriminated against students in the Program on the basis of disability by depriving them of necessary services or academic support, or by creating or allowing a hostile environment on the basis of disability.

Section 104.43(a) of the regulation implementing Section 504 provides generally that no qualified student with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any postsecondary education program. The Title II Regulation, at 28 C.F.R. §35.130(b)(1)(iii), contains a similar general prohibition.

Section 104.44(d) of the Section 504 regulation requires recipients to ensure that disabled students are not excluded from participation in education programs due to the absence of auxiliary aids. OCR interprets the Title II regulations to require postsecondary educational institutions to provide necessary academic adjustments and auxiliary aids to the same extent as is required under Section 504.

The complainants alleged that instructors in the Gunsmithing program had frequently made derogatory comments about individuals with disabilities, including statements that they could not contribute to society and were receiving an undeserved special assistance. They also alleged that Gunsmithing instructors had subjected complainant H. to discrimination by failing to provide adequate information to the California Department of Rehabilitation (DOR) to enable him to obtain the tools he needed to participate in the program.

Our investigation showed the following:

- None of the students interviewed, other than the complainant, recalled hearing derogatory statements about persons with disabilities. One student recalled a reference to his disability, but he did not regard it as demeaning, and did not complain about it. Another student stated that stress related to a dispute with an instructor had caused him disability-related health problems, but did not indicate that the dispute itself was related to his disability.
- Complainant H is an individual with a disability. He receives services from the California Department of Rehabilitation (DOR). As part of these services, DOR pays for certain materials that complainant H needs to attend College. According to complainant H, he was not able to purchase all of the tools he needed for the Gunsmithing program because the College did not provide adequate information to DOR.
- OCR reviewed course syllabi for numerous Gunsmithing classes, which included lists of the tools that were required for the course. There was no evidence that these syllabi were not provided to the complainant, or were provided to him later than they were provided to non-disabled students.
- The Gunsmithing department's alleged failure to provide information to DOR was the subject of ongoing discussions and correspondence between the complainant, College and department personnel, and DOR staff. The evidence showed that the complainant's primary concern was DOR's failure to authorize the purchase of all of the tools he needed, and that Gunsmithing instructors were not supporting his claims to DOR that certain tools were required.

OCR concluded that the evidence did not support a finding that a hostile environment on the basis of disability existed in the Gunsmithing department, or that students were

Page 9 – (09-03-2112)

subjected to different treatment on the basis of disability. OCR therefore did not find a violation of Section 504 or Title II with regard to the complainants' hostile environment allegation.

The Section 504 regulation requires post-secondary institutions to provide auxiliary aids where needed to enable students with impaired sensory, manual or speaking skills to participate equally in an educational program. In order to fulfill this requirement, colleges must sometimes provide advance notice of course requirements, including required materials, to students, DOR, or other agencies, so that special adaptive equipment can be obtained, materials can be modified, or other necessary auxiliary aids can be provided.

In this case, however, there was no indication that the complainant required special equipment or other auxiliary aids because of his disability. His arrangement with DOR enabled him to obtain DOR financing for the same tools and equipment that all students in his classes were required to purchase. Under the circumstances of this case, the College was not required to provide the Student or DOR with special advance notice of tools that would be required in the complainant's classes.

It is clear that the Gunsmithing department did not always support the complainant's claims that certain tools were required or were appropriate for purchase by DOR. However, the evidence did not establish that the complainant was provided less information than nondisabled students concerning the tools required for participation in Gunsmithing courses, or that such information was provided to him less promptly than to other students. OCR did not find evidence of discrimination on the basis of disability in connection with this allegation.

OCR is closing this complaint as of the date of this letter. The College is being notified concurrently.

If you have any questions about this letter, please call Cheryl Willis, the investigator assigned to this complaint, at (415) 556-4253.

Sincerely,



Charles R. Love
Program Manager

Enclosure: Resolution Agreement

cc: Danielle Schulte, Zampi & Associates



Lassen Community College District

Office of the Superintendent/President

Lassen Community College
Docket Number 09-03-2112
Resolution Agreement

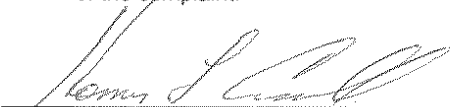
In order to resolve the complaint referenced above, filed with the U.S. Department of Education, Office for Civil Rights (OCR), the Lassen Community College agrees to take the following actions:

1. The College will revise its sexual harassment policies and procedures and its discrimination complaint procedures to ensure that they provide for the prompt and equitable resolution of complaints of discrimination on the basis of sex. Specifically, the revised procedures will
 - a) clearly identify the individual responsible for accepting and responding to such complaint(s);
 - b) specify timeframes for investigating and resolving complaints of discrimination and for responding to subsequent appeals (if any);
 - c) include a description of the investigation that will take place in response to the complaint, including interviews of relevant witnesses and review of documentation;
 - d) ensure that the complainant is informed, in writing, of the outcome of the investigation, including any corrective actions;
 - e) include an assurance that the College will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, including taking disciplinary action against students or employees, where appropriate.

The revised procedures will be submitted to the OCR by December 1, 2003 for review and feedback regarding consistency with Title IX standards. The final procedures will be adopted by January 14, 2004.

2. The College will take effective action to ensure that those responsible for receiving and investigating complaints are appropriately qualified to respond to complaints of sexual harassment and sex discrimination, and that they follow the Sexual Harassment Policies and Discrimination Complaint Procedures, including, but not limited to:
 - a) interviewing all available witnesses with relevant information, including those identified by the complainant;
 - b) documenting all interviews;
 - c) providing the parties with written notice of the outcome of the investigation and of the College's determination;

- d) maintaining the confidentiality of information provided by the complainant and all other witnesses, except when revealing such information is necessary to appropriately investigate the complaint;
 - e) maintaining a record of all sexual harassment complaints filed with the College, both informal and formal, including the disposition of each complaint; and
 - f) adhering to timeframes and notice requirements set forth in the policies and procedures.
3. The College will provide OCR with evidence that it has taken appropriate action to ensure that all staff responsible for receiving and investigating sexual harassment and sex discrimination complaints are appropriately qualified and understand their roles in implementing the Policy. Such actions may include, but are not limited to, issuance of a memorandum from the President of the College, and/or a training session for all designated persons.
 4. The College will provide all College staff with notice concerning the procedures for responding to complaints of sex discrimination and sexual harassment, including the identity of the individual(s) responsible for receiving and investigating such complaints. This notice will be provided by January 15, 2004, and will be repeated and updated as necessary after the adoption of revised procedures.
 5. The College will provide documentation of its actions described in 3. and 4. above by January 16, 2004.
 6. Notice of the availability of the sex discrimination complaint procedure, information about where copies can be obtained, and a summary of the procedure, will be posted on the College website within 10 days after it is finalized. The same information will be included in the next reprinting of the general catalog, class schedule and all student, staff and faculty handbooks. Confirmation of the revisions to the publications will be sent to OCR within 30 days after publication.
 7. The College will provide OCR with a copy of its record of all complaints of sex discrimination or harassment filed with the College for the 2003-2004 school year on July 1, 2004, and for the 2004-05 school year on July 1, 2005. This record will include the name and status (student, staff, faculty, etc.) of the complainant and the respondent, a description of the investigation conducted, the outcome, and any corrective actions taken, and a copy of the notification provided to the complainant concerning the outcome of the complaint.



Dr. Homer Cissell
Lassen Community College

10-30-03
Date