



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

JUL 30 2004

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San Francisco, California 94102
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Jolene Koester
President
California State University, Northridge
18111 Nordhoff Street
Northridge, California 91330

(In reply, please refer to # 09-04-2057.)

Dear President Koester:

The U.S. Department of Education, Office for Civil Rights, has completed its investigation of the above-referenced complaint against the California State University, Northridge. The complainant alleged that the University discriminated against her (Student)¹ on the basis of sex. The issues OCR investigated were:

- Whether the Student was subjected to sexual harassment by a University professor, and
- Whether the University conducted an adequate investigation of the complaint the Student submitted on November 26, 2003.

OCR investigated the complaint under the authority of Title IX of the Education Amendments of 1972 and their implementing regulations. Title IX prohibits discrimination on the basis of sex in education programs and activities operated by recipients of Federal financial assistance. The University receives funds from the Department and is subject to Title IX and their regulations.

OCR gathered evidence through interviews with the Student and University staff. OCR also reviewed documents and records submitted by the University and the Student.

OCR concluded that there was insufficient evidence to establish a violation of Title IX or its regulations with respect to the issues investigated. The facts gathered during the investigation, the applicable legal standards, and the reasons for our determination are summarized below.

¹ OCR notified the College of the identity of the complainant (Student) when the investigation began. We are withholding her name from this letter to protect her privacy.

Legal Standards and Background:

Educational institutions that receive Department funding are responsible under Title IX for providing students with a nondiscriminatory educational environment. Sexual harassment of a student can result in the denial or limitation, on the basis of sex, of the student's ability to participate in or receive benefits, services, or opportunities from the institution's program, in violation of Title IX and the Department's Title IX regulations, located at 34 C.F.R. Part 106.

OCR generally defines sexual harassment as consisting of unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature. A school is responsible for sexually harassing conduct by an employee when the employee engages in the conduct in the context of carrying out responsibilities for providing benefits and services in the school's program, and the harassment denies or limits the student's ability to participate in or benefit from the program. This situation may occur where the employee: (1) explicitly or implicitly conditions a student's participation in an education program or activity; or bases an educational decision on the students' submission to unwelcome conduct of a sexual nature or (2) engages in unwelcome conduct of a sexual nature that is sufficiently severe, pervasive or persistent so as to create a hostile education environment, thereby denying or limiting the student's ability to participate in or benefit from the school's program.

In addition, Title IX regulations establish procedural requirements that are important for the prevention or correction of sex discrimination, including sexual harassment. Under 34 C.F.R. § 106.8(b), education institutions are required to adopt and publish grievance procedures providing for the prompt and equitable resolution of complaints of sex discrimination, including sexual harassment.

Our investigation showed the following:

- The Student was enrolled at the University in a Bachelor's Degree program with a double major, Political Science and Pan African Studies (PAS). The Student had completed all units necessary to graduate with a Bachelor's Degree in Political Science but was enrolled in two remaining PAS courses (PAS 466B and PAS 301) to complete her second major in Pan African Studies.
- During the spring semester of 2003, the Student was employed in a management training internship program at a financial institution and was enrolled at the University only part time. The Student stated that she found that she could not maintain her courses due to the demanding nature of her management training internship program. Consequently she did not complete her projects by the end of the semester and received "incompletes" as grades in these two courses. The written University policy on grades allows students one year to finish a course in which an incomplete has been assigned.

- The Student contacted the professor in June 2003, to arrange to meet him to discuss completion of the incompletes as well as the Master of Business Administration program. She said that in the past she had taken several classes from him and that she considered him a mentor, an advisor and a friend.
- On August 29, 2003, the Student and professor drove to a local restaurant in the Student's car. The Student stated that during lunch they discussed the completion of her courses as well as how to prepare for the business school tests. She said that the professor then made a comment about how people in the business world need to analyze and understand when they need to "trade favors" to get what they want. The Student said she thought this comment implied she could resolve her academic difficulties through an exchange of sexual favors.
- The Student stated that when they returned to the car, she asked the professor what he had meant and the professor began an "inappropriate" conversation about how he liked her, implying he wanted a physical relationship. She said she asked directly if her grade would be affected if she did not sleep with him and he responded "no" that her grades would not be affected and that would not be lawful. She said the conversation continued and when she told him the conversation was inappropriate he replied that she had graduated so it was all right. She said when she told him she was married, he responded that he was too, but that polygamy was part of his culture.
- The complainant said that she received two letters, one for each of the courses, dated October 3, 2003, from the Pan African Studies Department. The documents reveal that each letter advises the student of the incomplete grade, indicates the course and professor's name, and sets the date that the "incomplete" will expire. The letters suggest that the professor be contacted to arrange to resolve the matter. It indicates that "incompletes" must be resolved within a calendar year or the grade will be counted as an "F".
- The Student said that in late October 2003, she sent an email to the professor and asked what the assignment would be for the final as the professor had said there would be extra work. In his written reply, he explained that one of the courses was a core course and could not be completed as an independent course and that it was scheduled for the next semester. He then wrote that the other course could be completed this semester or she could get an extension to complete it the next semester. He then gave her his office hours.
- In her responsive email, the Student questioned why both courses could not be independent and asked if other instructors would be teaching the courses the next semester. His response was that both courses would be taught in the spring and suggested she come by to discuss the classes.

- OCR understood the Student to perceive the letters and the subsequent emails as an attempt by the professor to continue the previous inappropriate conversation.
- The Student contacted the Office of Equity and Diversity (OED) in mid November and filed an internal grievance on November 26, 2003, alleging discrimination on the basis of sex (i.e., sexual harassment). She specifically cites the August 29, 2003 conversation and also claims that the professor addressed her with a pet name and signed his emails inappropriately. She provided copies of the emails dated before the lunch meeting.
- The University publishes its policy of nondiscrimination and provides "Discrimination Grievance Procedures for Students". The procedures set forth how a student can file a grievance, what legal jurisdictions are covered and the importance of timeliness in filing a complaint. The procedures also designate the University official responsible for coordinating compliance with the regulations, including coordination of investigations of complaints alleging noncompliance.
- The designated Administrative Officer conducted an initial review of the grievance. The Student's written complaint and interview were considered along with the professor's December 15, 2003 response and information from the administration of the Pan African department. In his response, the professor denied sexual harassment, stating that the Student had asked him if he had ever traded favors to which he responded "no" and explained that would be unprofessional and illegal. He stated that she made it known to him that she wanted two "A" grades to improve her chances of being admitted to a graduate business school. He also stated that he believed that because the Student could not find time to complete her work, she was trying to force him to give her grades. In response to the allegation regarding the use of a pet name and inappropriate sign-off, he said that he called her by the name that others call her as a nick name, that it was not a pet name, and that his emails were all responsive to her questions. The time he signed off as "your (his name)" it was informally to distinguish himself from another person the Student knew who she thought might be his relative.
- The department indicated the willingness and ability to offer the Student opportunities to complete her courses.
- On January 27, 2004, the University informed the Student by letter that the OED had reviewed the complaint allegations and evaluated them in light of the information it had received. It wrote that it was the determination of the OED that the facts pertaining to the complaint did not rise to the level of harassment. However, the letter continued by stating that the Chair of the PAS and the Dean of the Social and Behavioral Sciences did offer to personally supervise and assist the

Student in the completion of her degree requirements for her double major in PAS. She would not have to have further contact with the professor.

- The Student replied that she had her degree in Political Science and rather than to complete the classes for Pan African Studies, she wanted to withdraw from the classes and have the "incompletes" removed from her transcript. The University agreed to the Student's request and the incompletes were removed on March 16, 2004.

In this case; to establish sexual harassment the preponderance of the evidence must show either that the professor conditioned the student's grades on sexual favors or that conduct occurred that was sufficiently serious to create a hostile education environment for the complainant. In order to conclude that conduct occurred that was sufficiently serious to create a hostile education environment for the complainant, the evidence would have to show that a) the alleged sexual advances were made on the basis of sex; b) the conduct was unwelcome; and c) the complainant's access to educational benefits or services was denied or limited as a result.

The professor had assigned "incompletes" for the Student in accordance with the University's policies and the Student's request for additional time to complete the course work. The parties disagree about who raised the issue of "trading favors" and the motives of the other party. However, both parties agreed that in the August 29, 2003 conversation, the professor stated that the Student's grades were not in issue. Even when assuming that the conversation took place as the Student alleged, the facts indicate that there was an ambiguous one-time statement and that the professor quickly learned that a sexual advance was unwelcome. There is no evidence that any further advances took place after that encounter. The department, not the professor, sent the routine form notices to the Student in regard to the status of the courses. There was no further action by the professor in regard to the matter except to respond to the Student's emailed questions. Accordingly, there is insufficient evidence to find that the professor conditioned an educational decision or benefit on the Student's submission to sexual conduct or that there was persistent and pervasive conduct that created a hostile environment on the basis of sex. Moreover, the University did insulate and safeguard the Student against any further potential harassment or retaliation.

The complainant also alleged that the University did not conduct an adequate investigation of her complaint of sexual harassment. The grievance procedures were used and provided opportunities for clarification of the complaint, for reasonably prompt timeframes and for notice of the decision. These procedures set forth that there will be an initial review to determine if the allegations rise to the level of illegal discrimination and/or harassment. When there was a question at the University of whether the facts demonstrated a violation of the laws prohibiting sexual harassment during that review, the OED undertook a preliminary investigation in this case, including an interview of the complainant, a statement from the professor, and additional information from the

department regarding the Student's opportunities to complete the program. The University promptly initiated its grievance procedures, interviewed the Student, contacted other named and appropriate individuals for further information, and made its determination based on appropriate legal standards. The University also offered the Student several opportunities to complete the program for her second major without having any further contact with the professor. When the Student decided not to go forward with completion of the program, the University allowed her to withdraw from the courses that the Student had not completed. OCR concludes that the University provided a prompt and equitable resolution of the grievance.

Conclusion:

Based on the facts and analysis set forth above, OCR finds the University in compliance with Title IX and its regulations with respect to the issues investigated in this complaint. OCR is closing the complaint as of the date of this letter. Thank you for the cooperation of your staff in the expeditious resolution of this complaint.

If you have any questions about this letter, please call Vicki Riordan at (415) 556-4233.

Sincerely,



Robert E. Scott
Team Leader
Office for Civil Rights