



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS, REGION IX

MAR 21 2007

Dr. Homer Cissell
President
Lassen Community College
478-200 Hwy. 139
Susanville, California 96130

(In reply, please refer to # 09-06-2151.)

Dear President Cissell:

The U.S. Department of Education, Office for Civil Rights, has completed its investigation of the above-referenced complaint against Lassen Community College. The complainant alleged that the College discriminated against her on the basis of sex. The issues OCR investigated were:

1. Whether the College failed to respond promptly and effectively to the complainant's March 2006 sexual harassment complaint, and
2. Whether the complainant's Instructor refused to issue a final grade for one business course, and gave the complainant a lower grade than deserved in another course in retaliation for filing her March 2006 sexual harassment complaint against him.

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

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

OCR concluded that the evidence established a violation of Title IX and its implementing regulations with respect to issue one. OCR found that the evidence did not support a violation of Title IX and its implementing regulation with respect to issue two. The facts gathered during the investigation, the applicable legal standards, and the reasons for our determination are summarized below.

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Our mission is to ensure equal access to education and to promote educational excellence throughout the nation.

Legal Standards

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.

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.

The Title IX regulation, at 34 C.F.R. §106.71, incorporates 34 C.F.R. §100.7(e) of the regulation implementing Title VI of the Civil Rights Act of 1964 and prohibits colleges and universities from intimidating, coercing, or retaliating against individuals because they engage in activities protected by Title IX. When OCR investigates an allegation of retaliation, it examines whether the alleged victim engaged in a protected activity and was subsequently subjected to adverse action by the college, under circumstances that suggest a connection between the protected activity and the adverse action. If a preliminary connection is found, OCR asks whether the college can provide a nondiscriminatory reason for the adverse action. OCR then determines whether the reason provided is merely a pretext and whether the preponderance of the evidence establishes that the adverse action was in fact retaliation.

Our investigation showed the following:

- The complainant began taking classes at the College in Spring, 2005. She registered with the College's Disabled Student Programs and Services (DSPS) office and received academic adjustments for psychological and physical disabilities.
- In Fall 2005, the complainant took two classes (Math 84 and Economics 10) from the Instructor.
- In March 2006, the complainant filed a discrimination complaint, alleging in part, that the Instructor made sexually inappropriate comments to her. The nature of the alleged harassment took the form of "flirting" by looking at the complainant with a "certain smile" and inappropriate comments, such as "that's what you get for not getting a man to take care of you, unhappy woman" and "crazy woman." According to the complainant, when she rebuffed the Instructor's alleged

advances, he withheld one grade, and gave the complainant a lower grade in another class.

- The College has a Board approved policy against sexual harassment. It also has a Discrimination Complaint Procedure, which is used to respond to discrimination complaints. The procedure is Board approved, Policy Numbers 4011-4012, 5011-5012. The procedure is published as an Administrative Rule and Regulation. The College's course catalogue sites its nondiscrimination policy and encourages individuals to contact the Gender Equity Coordinator with questions. Contact information is provided.
- The Discrimination Complaint Procedure requires, in part:
 - Notice that an investigation is underway, to the Chancellor and the complainant, within 10 days from receipt of the complaint
 - A written report to the College President that should include a description of the circumstances, a summary of information from each witness, analysis and findings
 - A Letter of Determination to be sent to the complainant. It should include the determination, a description of the actions taken, and the right to appeal.
 - That within 150 days, the Chancellor is forwarded a copy of the complaint, the investigative report and the Letter of Determination
- The March 2006 sexual harassment complaint was investigated initially by the College's Employee Relations Director and subsequently by the College's Equal Opportunity Coordinator (EOC).
- Upon learning that the complainant was disabled, the Employee Relations Director, notified the DSPS office of the complaint. DSPS personnel intervened to support the complainant in completing her work. DSPS arranged academic adjustments for the complainant: she no longer had to attend class or interact with the Instructor; she was to obtain class notes from fellow students; she was to turn in her homework to DSPS; and, she was to take her tests at the DSPS office. She would not be graded down for lack of class attendance. DSPS notes reveal that, on occasion, the complainant maintained that she had turned in her homework when she had not. Based on the work she submitted with these academic adjustments, the Instructor gave her a D in one class and an F in the other class.
- The EOC interviewed relevant witnesses, including the Instructor and a student witness.
- Enabling the complainant to take the Instructor's course in a manner consistent with the academic adjustments designed by the DSPS office required time and

effort from the Instructor. The Instructor cooperated in adapting his course to an alternate mode of learning for the complainant.

- The student witness interviewed stated that she overheard the Instructor make sexually inappropriate remarks to other students, but not to the complainant.
- In light of the complainant's belief that her grades were given in retaliation for filing the sexual harassment complaint against the Instructor, the DSPS office offered to have the complainant's work reviewed by a knowledgeable, unbiased 3rd party. DSPS personnel requested that the complainant bring in her homework for this purpose. The complainant was only able to provide half of her homework, stating that all the homework in which she received "A"s was stolen.
- When the complainant was asked about her performance, she stated that people hack into her computer, steal her passwords, wipe out her homework, break into her apartment, and break into her car.
- A review of the complainant's transcript indicates that she received grades in all of her classes taken with the Instructor. Ultimately, the complainant choose not to file a formal grade appeal.
- The EOC had difficulty contacting the complainant throughout the investigation, but was able to speak with her in June 2006 after sending her written correspondence.
- A Letter of Administrative Determination was sent to the complainant on June 27, 2006 stating that "the complaint has no validity." No appeal rights were provided in the letter.

Issue 1: Whether the College failed to respond promptly and effectively to the complainant's March 2006 sexual harassment complaint.

OCR determined that the College's response to the March 2006 sexual harassment complaint was not equitable because there were numerous procedural flaws in the College's investigation. For example, the College's internal procedures call for notice that an investigation is underway, to the Chancellor and the complainant, within 10 days. OCR thoroughly reviewed all files related to the complaint and found no evidence of this notification. After an investigation, the procedure provides that there is to be a written report to the College President that should include a description of the circumstances, a summary of information from each witness, analysis and findings; In this case, an investigative report was not written.

The procedure calls for a Letter of Administrative Determination to be sent to complainants that should include the determination, description of actions taken, resolution and right to appeal. The College sent the complainant a very brief letter on

June 27, 2006, however it simply states that the complaint has no validity because the complainant was “accommodated with her request not to attend classes . . .” This rationale does not reach the question of whether or not sexual harassment occurred and is at least as germane to her disability as her claim of sexual harassment. Though OCR commends the College for the steps it took to accommodate the complainant, the analytical intermingling of the complainant’s Title IX rights with her Section 504/Title II rights impaired the College’s ability to provide the complainant with the sexual harassment determination to which she was entitled. In addition, no appeal rights were included in the letter.

Within 150 days from the date the complaint was received, the Chancellor is to be forwarded a copy of the complaint, the investigative report (which could not have been forwarded since it was not written) and the Letter of Determination. There is no evidence that the Chancellor was provided with either the complaint, or the June 27, 2006 letter.

The failure to follow a College’s internal procedures is indicative of a failure to provide an equitable resolution process. It is likely that following its procedures would not have resulted in a finding that sexual harassment occurred, however, all students, should be afforded procedural safeguards, regardless of the College’s final determination. Most significantly, compliance with Section 504 is not dispositive of compliance with Title IX, and efforts to accommodate a student with a disability, even laudable ones, do not provide a “safe harbor” or substitute for compliance with Title IX. Therefore OCR found the College out of compliance with Title IX and its implementing regulation with regard to this allegation.

Issue 2: Whether the complainant’s Instructor refused to issue a final grade for one business course, and gave the complainant a lower grade than deserved in another course in retaliation for filing her March 2006 sexual harassment complaint against him.

OCR determined that filing the March 2006 discrimination complaint is a protected activity contemplated by the regulation. The Instructor knew that the complainant filed a complaint of sexual harassment as he was interviewed, on or around March 15, 2006, as part of the investigation. Thereafter, the complainant received a D in one class and an F in another course taught by this Instructor.¹ These grades constitute an adverse action.

There is a nexus between the filing of the complaint and the grades as they occurred within a three-month period of one another, the individual named in the complaint issued the grades, and the Instructor had knowledge of the complaint against him.

The College’s legitimate, non-retaliatory reason for the poor grades of the complainant was that the complainant’s work-product justified the grades she received. OCR found this reason to be credible given the College’s willingness to have a knowledgeable, unbiased 3rd party review the work, and the complainant’s inability to produce half her

¹ The complainant received two “F”s in other courses, not taught by the Instructor.

homework. In addition, the College's willingness to provide academic adjustments for the complainant including separating her from the instructor, absent a finding that sexual harassment occurred, attests to its objective to keep the complainant in school in a welcoming environment. The College's actions are contrary to any evidence of pretext. Therefore OCR finds that the College did not violate Title IX with respect to this allegation.

OCR takes special note of the professional, collaborative, well-informed efforts of the College's DSPS office. The DSPS staff, specifically Sandra Beckwith and Cindy Howe consistently documented their interactions with the complainant. Their actions were timely and consistent with the law. Their hard work to facilitate the complainant's access to the College's programs and activities is evident.

Based on the facts and analysis set forth above, OCR finds the College out of compliance regarding allegation 1 and in compliance regarding allegation 2 with Title IX and its regulations.

The College has entered into a remedial agreement, which when fully implemented, will return the College to compliance on this complaint.

OCR wishes to take this opportunity to thank the College staff for their expeditious assistance in the successful resolution of this complaint.

If you have any questions about this letter, please call Vicki Riordan at (415) 486-5545.

Sincerely,



Robert E. Scott
Team Leader
Office for Civil Rights

Enclosure

RESOLUTION AGREEMENT

Lassen Community College District

OCR Docket # 09-06-2151

In order to resolve compliance issues under Title IX of the Education Amendments of 1972, identified through investigation of the above-referenced complaint filed with the U.S. Department of Education, Office for Civil Rights (OCR), against the Lassen Community College District (College), the College agrees to take the actions described below.

I. Letter

The College will draft and distribute a letter to all administrators and instructors for the purpose of drawing attention to the existence of its Discrimination Complaint Procedure, the College's duty to respond to complaints - regardless of the ultimate determination, how to forward a discrimination complaint, and identifying the designated individual(s) responsible for investigating discrimination complaints.

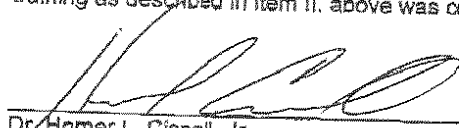
II. Training

The College will conduct training for those employees with specific responsibility for carrying out the procedural requirements of its Discrimination Complaint Procedure. The training will focus on both the College's responsibilities under its own procedures, as well as the College's obligations under Title IX.

III. Monitoring

A. By April 30 2007, the College will send OCR a draft of the letter it intends to distribute consistent with item I. above. The letter will be sent 10 days after OCR approval.

B. By July 31 2007, the College will send OCR documentation showing that the training as described in item II. above was completed.


Dr. Homer L. Cissell, Jr.
President

3-20-07
DATE