



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

October 19, 1999

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Originator's Copy	<i>Paul</i>
Other:	

Dr. Salvatore G. Rotella
President
Riverside Community College
4800 Magnolia Avenue
Riverside, CA 92506

(In reply, please refer to Docket Number 09-95-6005)

Dear Superintendent Rotella:

On September 14, 1994, the US Department of Education Office for Civil Rights (OCR) informed you that OCR was initiating a compliance review of the Riverside Community College (RCC) to determine whether RCC had engaged in incidents of harassment and/or retaliation on the basis of race and/or sex which have created a hostile environment for RCC students and/or staff. The letter also stated that this investigation would incorporate allegations of discrimination and retaliation on the basis of race and sex raised by a particular individual (hereinafter C) whose complaint was assigned OCR docket number 09-94-2007.

This compliance review was conducted pursuant to OCR's authority under Title VI of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972. As Riverside Community College receives Federal financial assistance from the US Department of Education, it is subject to these laws. These laws prohibit, respectively, discrimination on the basis of race/national origin and sex. 34 C.F.R. Parts 100 and 106. These laws directly or by incorporation also prohibit retaliation for filing a complaint with OCR or engaging in "protect activities" such as making a complaint of discrimination or filing a grievance with a recipient institution such as Riverside Community College. 34 C.F.R. § 100.7(e).

This matter took an exceptionally long period time to resolve. Resolution negotiations began in August of 1996. The OCR and the College had substantially differing views of the facts, their meaning under the law, and the appropriate elements of a voluntary resolution agreement. Nonetheless, on March 16, 1999, the President of the College, without admitting to any violation of the law, signed a "corrective action plan (hereinafter, CAP)." [A copy of the CAP is attached.]

Following an extensive investigation, on August 6, 1996, the RCC President and counsel were informed orally by OCR that OCR had concluded that:

- 1) C's treatment as well as that of other students evidenced that RCC lacked the internal procedures and understanding of its Title VI and Title IX responsibilities necessary to appropriately respond to allegations of discrimination raised to the College by its students; and,
- 2) That C (an African American male nursing student) had been subject to the same deficiencies when he sought investigation of allegations of discrimination on the basis of race and sex in his treatment by the Nursing Department; and,
- 3) That the RCC Nursing Department made a determination that C was "unsafe" and therefore dismissed him. This determination was made pursuant to a department procedure for addressing the inadequate performance of nursing students. However, many steps of the procedure were not followed or were denied because of the retaliatory motives of one or more members of the Nursing staff. RCC administrators knew about these circumstances but did not correct them. Therefore, any decision made as a result of this procedure was inherently unreliable.

The first conclusion was based on consideration of documents and policies maintained by the College, and interviews of faculty, administrators and students, and a review of RCC's investigatory records. The primary evidence relied upon by OCR in reaching its conclusion was the absence of coherent and clear procedures such that students could readily know where, how, and when to file a complaint and obtain an impartial and thorough investigation of their allegations of discrimination or retaliation. As to some issues, such as discrimination in grading, RCC appeared to have no process that would entertain such an allegation. The concerns raised by the documentary evidence were cross-validated by a review of past internal investigations. Some investigations reviewed by OCR revealed among other flaws, a failure to apply investigatory and evidentiary standards consistent with the law of discrimination, a failure to contact relevant witnesses or to conduct any investigation at all, and an absence of recognition of what kinds of conduct raise an allegation of discrimination.

With respect to the second and third allegations OCR was not unmindful of the degree of deference that colleges and university are entitled to in making academic decisions, such as whether to dismiss a student on academic grounds. Moreover, the courts have been particularly sensitive to the complexities involved in scrutinizing decisions in the allied health fields. However, OCR cannot defer to such a degree that it absolves itself of the responsibilities assigned to it by Congress under Titles VI and IX. Nor can OCR defer to such a degree as to render these laws meaningless.

The courts when faced with this difficult balancing of legitimate interests have chosen to adopt a practice that extends deference to the degree that those institutions take seriously their own duties to diligently and competently address allegations of discrimination. Where the courts find that this responsibility was not fulfilled objectively and thoroughly, they may still defer deciding whether the individual in question is an

academically qualified student but rather fault the institution for its lack of procedural diligence and require a substantial reform of how the institution address such matters. In the appropriate case, this may require having the institution reconsider its prior determinations under entirely new processes involving some new individuals.

In this matter, OCR has followed the same approach. OCR did not reach a conclusion about the competence of the individual complaint to continue as a nursing student. It did however conclude that at multiple steps this individual failed to receive a "prompt and equitable" and unbiased consideration of his initial allegations of discrimination, in grading, for example, as required by the OCR regulations found at 34 C.F.R. § 104.7(b). He also failed to receive equal and nonretaliatory consideration of whether he his performance was sufficient to meet the standards of the Department and the College to continue as a nursing student.

The second and third conclusion was based on consideration of documents and policies maintained by the College, and interviews of faculty, administrators and students. The primary pieces of evidence relied upon by OCR in reaching its conclusion were:

- 1) The evidence provided above that as a general matter, RCC procedures and practices were inadequate to handle complaints of discrimination including the very types of issues raised by the complaint.
- 2) Some evidence that C, the only African American male in the Department in many years, was held to a higher, inconsistent, and less forgiving academic and safety standards.
- 3) Evidence of contemporaneous statements made in the Nursing Department and to OCR investigators that reflect bias on the basis of race.
- 4) A lack of confidentiality in the discrimination complaint process such that C's protected activities became well-known throughout the Department.
- 5) Deviation from RCC's Nursing Department policies and practices in processing the complainant to dismissal.
- 6) Interpretation and characterizations of C as if he were prone to violent conduct despite an absence of evidence that C had such a disposition. Moreover, these characterizations have historically been associated with negative stereotypes about African American males.
- 7) Despite the fact that key senior administrators had multiple instances of substantial evidence that caste doubt upon the objectivity of the perception by one or more members of the Nursing Department that C represented a threat to their personal safety, the senior administration took no meaningful steps to diminish or

circumscribe the controlling authority of these individuals in the academic decision-making process. OCR most certainly does not doubt the necessity to take most seriously perceived threats to the safety of faculty members (or other students). However, no matter how appropriate it may have been to address and comply with the security related requests of Nursing Department faculty members, it was a serious error to not take their reported perceptions into account when judging the independence they should be afforded in academic decision-making concerning the same individual. In this instance, no meaningful steps were taken to minimize the potential influence of bias or retaliation in this matter.

- 8) Similarly, there was a lack of concerted actions by the senior administration to disengage Nursing Department staff from the growing polarization of the Department over the complainant's allegations.
- 9) A close proximity in time between when C's allegations of discrimination became known to the Nursing Department and when there was an escalation in expressions of concern about his competence. It was these incidents that were cited at his dismissal.

Despite the serious nature of the conclusions reached by OCR, and the wide disparities in perspectives on what took place in this matter, OCR is pleased that the RCC has entered into a comprehensive resolution agreement that focuses on how complaints of discrimination will be addressed in the future. In summary, the plan requires RCC to provide training on the revised procedures to relevant RCC staff, to distribute the procedures to students, faculty, and staff, to monitor resolution of complaint under the procedures, and to develop and present a series of workshops addressing race and sex discrimination as well as retaliation. We believe the steps agreed to by RCC are reasonably calculated to address the matters cited about.

This letter addresses only the issues discussed above and should not be interpreted to cover any other civil rights laws or regulations enforced by OCR.

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

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If you have any questions please contact Stefan Rosenzweig Regional Director, OCR
San Francisco at 415-556-4275.

Sincerely,

A handwritten signature in cursive script that reads "Stefan Rosenzweig".

Stefan Rosenzweig
Regional Director
Office for Civil Rights

Cc: Brad Neufeld
Dina Harris
Best, Best, and Krieger

CORRECTIVE ACTION PLAN
Riverside Community College (RCC) (09-95-6005)

In order to resolve the issues raised in the above-referenced compliance review and without admitting that it has violated any provision of Title VI of the Civil Rights Act of 1964 or Title IX of the Education Amendments of 1972, Riverside Community College (RCC) agrees to voluntarily take the action set forth below.

1. RCC will revise its grievance procedures for discrimination complaints to remedy the problem areas found by OCR. Specifically, the procedures will adhere to the following:
 - a. The revised grievance procedures for race and sex discrimination complaints, including complaints of racial and/or sexual harassment against faculty, staff, or students will be coordinated under the direction and guidance of one administrator. These procedures will be clearly distinguishable from the Affirmative Action and Staff Diversity Policy.
 - b. Consistent with recently revised Title V of the California Code of Regulations, the grievance procedure will provide to complainants an optional informal process that is clearly distinguishable from the formal process for resolving complaints of discrimination.
 - c. The grievance procedure will provide clear descriptions of each step in both the formal and informal processes.
 - d. Personnel designated to implement any step and/or process in the procedure will be identified in the grievance procedure by their title. The procedure will describe the role and responsibilities of personnel designated to implement a process within the procedure. RCC will ensure that all personnel designated to implement the procedure will have sufficient knowledge and training to investigate and resolve complaints regarding Title VI discrimination and Title IX discrimination, including sexual harassment.
 - e. The grievance procedure will include time frames for both the formal and informal complaint procedures consistent with Title V of the California Code and sufficient to provide a prompt and equitable resolution of complaints.

- f. The grievance procedure will provide for written notification to the complainant of the findings made and the resolution of the complaint to the extent permitted by law.
 - g. The grievance procedure will include a provision for complainants to appeal findings.
 - h. RCC will ensure that each procedure contains a clear identification of those persons who have the authority to impose sanctions and a clear description of any procedure to be used in the imposition of sanctions. RCC will develop discipline guidelines which describe the possible sanctions for findings of sex discrimination including sexual harassment and will keep records of sanctions imposed in each case. These records will be reviewed on an annual basis by the President or his designee to ensure that consistent sanctions are imposed.
 - i. The grievance procedure will include a policy statement that retaliation against complainants is prohibited and will provide a procedure for enforcing that policy. The retaliation policy will be communicated to the accused and the campus community. Language indicating that protection against retaliation is contingent on a "good faith" complaint will not be included in the procedure. The procedure will state that the filing of complaints of discrimination with the administration or with OCR are activities protected from retaliation. The procedure will state that cooperation with persons investigating a complaint of discrimination filed with the administration or with OCR is an activity protected from retaliation.
 - j. The section entitled "Only One Complaint" of current Board Regulation No. 3099/4099 will not be included in the revised procedures identified in paragraph 1 of this Corrective Action Plan.
 - k. The grievance procedure will clearly state that students may file a complaint with OCR at any time within 180 days of the date the alleged incident of discrimination occurred. The procedures will remove language indicating that the OCR process is an appellate process. The procedures will provide the correct OCR telephone number: (415) 437-7700 and address: U.S. Department of Education, Office for Civil Rights, Old Federal Building, 50 United Nations Plaza, Room 239, San Francisco, California 94102.
2. RCC will submit a final version of the grievance policy and procedures to OCR for approval by December 30, 1999.

3. RCC ensure that all personnel designated to implement the procedure will have knowledge and training to investigate and resolve complaints regarding race discrimination and sex discrimination, including sexual harassment. RCC will provide to OCR by June 30, 2000, documentation of the training including a training summary and a list of the persons trained.
4. RCC will provide OCR with a plan to distribute the grievance procedures to all RCC students, faculty, and staff at the beginning of each school year. RCC will provide proof to OCR by June 30, 2000 that the procedures have been distributed pursuant to the plan.
5. RCC will develop a system to monitor the receipt and resolution of inquiries and/or complaints involving race and/or sex discrimination including racial and/or sexual harassment, and retaliation. This system will include a process to monitor the type of inquiry or complaint, the issues involved, the person accused of conduct that is discriminatory, actions taken by RCC (including dates), resolution, and notification to the complaining party. RCC will provide OCR with reports of its monitoring on June 30, 1999, September 30, 1999, June 30, 2000, and September 30, 2000.
6. RCC will provide special training for guidance counselors who are available to all students at RCC, including those in the Nursing department. This will include a requirement that such counselors, in consultation with the Affirmative Action Officer, provide information about appropriate grievance procedures. RCC will provide to OCR by June 30, 2000 a description of how this program has been implemented.
7. RCC will develop a series of workshops on sex and race discrimination including sexual and racial harassment and retaliation to be presented at the beginning of each academic year during in-service training. The workshops will include an explanation of the concepts of sexual and racial harassment and retaliation and information about the RCC sex and race discrimination policies and grievance procedures including the proscription against and remedies for retaliation for filing complaints under the procedures. RCC will strongly encourage all faculty and staff to attend these workshops. For those faculty and staff who do not attend the workshops, RCC will distribute a memorandum from the RCC President and copies of training materials. RCC will provide OCR with written confirmation of these workshops, including a list of attendees, an outline of topics covered, and copies of materials distributed by June 30, 2000. RCC will provide OCR with written confirmation of the distribution of a memorandum and materials to those faculty and staff who did not attend the workshops, including a copy of the memorandum and materials distributed, the names of the persons to whom the memorandum and materials were distributed. RCC will provide OCR with written confirmation of subsequent workshops, memoranda, and materials presented and/or distributed to RCC faculty and staff for the following

two academic years, as described above, by June 29, 2001, and June 28, 2002, respectively.

8. Time lines specified in paragraphs 1 through 7 above may be extended upon good cause shown to OCR.

Salvatore Rotella
Dr. Salvatore Rotella

March 16/1999
Date

Stefan Rozenzweig
Stefan M. Rozenzweig

3/29/99
Date