



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS
WESTERN DIVISION, SEATTLE OFFICE

June 24, 2005

Dr. David Beyer
Interim President
Wenatchee Valley College at Omak
1300 Fifth Street
Wenatchee, Washington 98801

Re: Wenatchee Valley College at Omak
OCR Reference No. 10052010

Dear Dr. Beyer:

The Office for Civil Rights (OCR) has completed its investigation of the above-referenced complaint against Wenatchee Valley College at Omak (college). The student alleged that the college discriminated against her in violation of title IX of the Education Amendments of 1972 by: (1) not posting a grievance procedure consistent with Title IX and not accepting her formal complaint of sex discrimination; (2) not responding promptly and effectively to her allegation that she was sexually harassed by another student; and, (3) terminating her as secretary of the student government board in retaliation for complaining about sexual harassment.

OCR is responsible for enforcing Title IX and its implementing regulations, at 34 CFR Part 106, which prohibits discrimination based on sex in educational institutions that receive federal financial assistance from the U.S. Department of Education. Because the college is a recipient of federal financial assistance from this Department, the college is subject to the provisions of Title IX.

The legal issues raised by the complainant's allegations are:

Issue No. 1

Whether the college failed to publish a grievance procedure consistent with Title IX and failed to accept and process the student's formal grievance complaint of sex discrimination.

Issue No. 2

Whether the college failed to promptly and appropriately address the student's allegation that she was sexually harassed by another student.

Issue No. 3

Whether the college retaliated against the student by removing her from the student government board in retaliation for the student having complained of sexual harassment.

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During the course of our investigation, OCR reviewed records provided by the complainant and the college, interviewed the complainant, and conducted on-site interviews with college staff and officials. As discussed in greater detail below, OCR has determined that the college complied with Title IX with regard to Issues Nos. 2 and 3, but did not comply with Title IX with regard to Issue No. 1. This area of noncompliance has been addressed by the enclosed Settlement Agreement entered into by the college. Our findings and conclusions (in which the complainant is referred to as the student), are set forth, below.

Findings of Fact

1. The student attends Wenatchee Valley College at Omak (college), a 2-year community college located in Omak, Washington.
2. The student attended a student leadership training from August 30-September 1, 2004. Also attending the training were fellow student body officers from the college and a college official.
3. The student alleges that on the last night of the student leadership training, another college student sexually harassed her by making physical contact with her outside of the hotel, in an elevator, and on the following day on the van ride home.
4. On September 9, 2005, the student reported this alleged conduct to the Student Campus Coordinator at Omak who then contacted the Dean of Campus Operations (Omak Campus Dean).
5. On September 17, 2004, the Omak Campus Dean and Administrative Assistant met with the student regarding her allegations. The meeting notes reflect that the student requested that the matter be handled informally, that she wanted the alleged harasser to be notified that what he did was wrong, as well as be provided assurance that this would not happen again.
6. Between September 19 and October 7, 2005, the college investigated the student's allegation that she had been sexually harassed. The college interviewed the student, the alleged harasser, and the alleged harasser's student leadership training hotel roommate. The alleged harasser claimed that the physical contact between the student and himself was consensual.
7. On or around October 8, 2004, the college President assigned supervision of this investigation to the Dean of Student Development/Wenatchee Campus (Wenatchee Campus Dean). Based on information received during the initial interviews, the investigation was broadened to include whether the student, the alleged harasser, and the alleged harasser's hotel roommate drank alcohol at the student leadership training in violation of college rules.

8. On October 11, 2004, the Wenatchee Campus Dean interviewed the student, the alleged harasser, and four other witnesses who attended the leadership conference.
9. The college completed the investigation and included its determination in a letter dated October 19, 2004. The college did not conclude that the student had been sexually harassed because of the conflicting testimony of the parties and the lack of corroborating evidence. At the end of the college's October 19 letter to the student was notification of the college's determination regarding her allegation of sexual assault/harassment, "In regards to your allegations of sexual harassment, I have concluded based on my investigation that I could not find reasonable grounds that sexual harassment transpired. If there is any more I can do for you please contact me." The student and the alleged harasser were told to have no further contact with one another.
10. The college also concluded that all three students had been drinking alcohol and informed them in the October 19 letter that, because they had consumed alcohol at the leadership conference, they were suspended from their positions as student body representatives. College officials deny that the decision to terminate the student's position in student government was in retaliation for her complaining of sexual harassment.
11. On October 19, 2004, the Wenatchee Campus Dean and Omak Campus Dean told the student that the college is developing a sex assault/harassment procedure and that she should "check in the next three or four months on [the college's] progress." OCR's investigation identified a college procedure for discrimination and harassment complaints, revised in May of 2001, however, this procedure is not referenced in any of the information readily available to students, nor was it ever provided to the student.

Analysis and Conclusions

Issue No. 1

Whether the college failed to publish a grievance procedure consistent with Title IX and failed to accept and process the student's formal grievance complaint of sex discrimination.

The regulation at 34 CFR 106.8(b) requires that recipients adopt and publish grievance procedures providing for the "prompt and equitable" resolution of students' and employees' complaints of sex discrimination.

Because OCR found that the college did not provide notice to students of the availability of a grievance procedure for complaining of sex discrimination, OCR concludes that the college failed to publish a grievance procedure as required under Title IX with regard to this issue.

Also, OCR concluded that the college failed to afford the complainant the opportunity to have her complaint processed under the college's grievance procedure.

Issue No. 2

Whether the college failed to promptly and appropriately address the student's allegation that she was sexually harassed by another student.

The Title IX regulation and OCR policy interpretations of the regulation require that recipients promptly and appropriately address information that students are being subjected to a sexually harassing environment.

The college conducted a prompt investigation in response to the student's complaint of sexual harassment. The college interviewed the involved students and witnesses and concluded that the evidence did not establish that the student had been sexually harassed. OCR concludes that the college promptly and appropriately responded to the complaint of sexual harassment as required by Title IX.

Issue No. 3

Whether the college retaliated against the student by removing her from the student government board in retaliation for the student having complained of sexual harassment.

The regulation at 34 CFR 106.71 incorporates procedural provisions applicable to title VI of the Civil Rights Act of 1964, found at 34 CFR 100.6-11. The regulations require that, "no recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purposes of interfering with any right or privilege secured by section 601 of the Act or this part, or because he has made a complaint, testified, assisted, or participate in any manner in an investigation, proceeding, or hearing under this part."

OCR found that the college learned about the alcohol use incident through its investigation of the student's alleged sexual harassment. OCR found that the college suspended the student and two other students for alleged use of alcohol while at a college off-campus function in violation of college rules. While the evidence regarding this infraction came to the college's attention through the investigation of the student's complaint of sexual harassment, the evidence did not establish that the discipline was taken in retaliation for the student having complained of sexual harassment. As a result, OCR is unable to conclude that college failed to comply with Title IX with regard to this allegation.

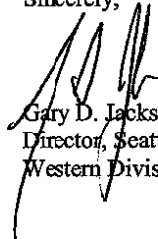
The college and OCR entered into discussions regarding the areas of noncompliance identified above in allegation No. 1. As a result of these discussions, the college has agreed to take the corrective actions set forth in the enclosed Settlement Agreement. OCR concludes that the college will be in compliance with Title IX with respect to the issues investigated in this case upon full implementation of the actions and commitments contained in the agreement. Based on the college's commitment to implement the actions specified in the agreement, which OCR will monitor, we are closing the above-referenced case as of the date of this letter.

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The findings and conclusions in this letter are limited to the specific facts and circumstances of this complaint.

Thank you, and your staff for your efforts in resolving the concerns in this complaint. If you have any questions regarding this letter, please do not hesitate to contact Robbin Favela, equal opportunity specialist, at (206) 220-7927.

Sincerely,



Gary D. Jackson
Director, Seattle Office
Western Division

Enclosure: Settlement Agreement

SETTLEMENT AGREEMENT

Wenatchee Valley College at Omak
Case No. 10052010

I. INTRODUCTION

To resolve the compliance concerns identified by the U.S. Department of Education Office for Civil Rights (OCR) following OCR's investigation of a complaint of sex discrimination concerning Wenatchee Valley College at Omak, OCR case no. 10052010, the parties have agreed as follows:

II. GENERAL PROVISIONS

- A. The parties to this Settlement Agreement (agreement) are Wenatchee Valley College at Omak (college) and OCR.
- B. This agreement shall become effective when the authorized representatives for both parties have signed the agreement.
- C. This agreement resolves only those compliance concerns identified as part of the investigation of this complaint by OCR, under title IX of the Education Amendments of 1972 (Title IX).
- D. The college agrees to fully implement and adhere to the obligations contained in this agreement. In consideration of this agreement, OCR agrees not to initiate enforcement proceedings with respect to the compliance matters identified in this investigation. It is agreed that in the event the college fails to comply with any provision of this agreement, OCR will take appropriate measures to effect compliance with Title IX with respect to these matters.

III. SPECIFIC PROVISIONS

A. TITLE IX GRIEVANCE PROCEDURES

- 1. By July 1, 2005, the college will review and revise, in consultation with OCR, its Title IX grievance procedures. The college's sex discrimination grievance procedures will include:

- a. a process that ensures for the prompt and equitable resolution of sex discrimination complaints, including, but not limited to, complaints of sexual harassment; and
 - b. the name or position of the person designated to address sex discrimination concerns and the method of contacting this person such as their phone number or address.
2. Beginning July 1, 2005, the college will take appropriate steps to ensure that its program participants, including students, staff, and members of the public, are notified of the above-referenced sex discrimination grievance procedures. Publication may include posting the Title IX grievance procedures in the college's student handbook, catalog, program website, and in buildings throughout campus.

B. NOTICE TO STAFF

By November 23, 2005, the college will provide written notice to all college faculty and staff of the college's Title IX grievance procedures. This written notice will also indicate where these grievance procedures are located.

C. STUDENT IN QUESTION

By July 1, 2005, the college president will write a letter to the student acknowledging that the student was not provided a copy of the college's sex discrimination grievance procedures during the 2004-2005 school year; and assuring her that the college has committed to ensuring that all college students, faculty, and staff are adequately notified of the college's Title IX grievance procedures and policy.

IV. REPORTING PROVISIONS

- A. By July 1, 2005, the college will submit to OCR its Title IX grievance procedures to OCR for review and comment, as described in section III.A.1., of the agreement.
- B. By November 23, 2005, the college will provide to OCR a list of all locations where the college has posted its Title IX grievance procedures, along with a copy of each of these publications, as described in section III.A.2, of the agreement.

- C. By July 1, 2005, the college will provide to OCR a copy of the notice provided to college faculty and staff, as described in section III.B., of the agreement.
- D. By July 1, 2005, the college will provide to OCR a copy of the letter to the student, described in section III.C., of the agreement.

SIGNED:

David N. Beyers
President
Wenatchee Valley College at Omak

June 22, 2005
Date

Gary D. Jackson
Regional Civil Rights Director

6-24-05
Date