



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS - REGION IX

JAN 22 2010

Dr. Loren Kramer
Interim President
Concordia University
1530 Concordia West
Irvine, California 92612-3203

(In reply, please refer to case number 09-09-2056)

Dear Dr. Kramer:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed against Concordia University. The complainant¹ alleged that the University discriminated against her on the basis of sex. The issue OCR investigated was whether the University failed to provide the complainant with a prompt and equitable grievance procedure to address her allegations of sexual harassment.

OCR investigated the complaint under the authority of Title IX of the Education Amendments of 1972 and its implementing regulation. 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 the regulation.

OCR gathered evidence through interviews with the complainant and University administrators. OCR also reviewed documents provided by both the complainant and the University, and audiotapes of the judicial hearing proceedings that occurred on February 11 and 12, 2009. OCR identified aspects of the University's internal complaint procedures which, while not resulting in an inadequate process in the complainant's case, were out of compliance with Title IX requirements. The University agreed to implement a Resolution Agreement that will resolve these compliance issues. The following is a summary of the applicable legal standards, the evidence gathered, and OCR's conclusions.

The regulations implementing Title IX, at 34 C.F.R. §106.31, prohibit discrimination based on sex by recipients of Federal financial assistance. Universities are responsible under Title IX and the regulations for providing students with a nondiscriminatory educational environment. Sexual harassment of a student can result in the denial or

¹ OCR notified the University of the identity of the complainant when the investigation began. We are withholding her name from this letter to protect her privacy.
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The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

limitation, on the basis of sex, of the student's ability to participate in or receive education benefits, services, or opportunities.

The Title IX implementing regulations, at 34 C.F.R. § 106.8(b), require a recipient to adopt and publish grievance procedures providing for a prompt and equitable resolution of student complaints alleging sex discrimination.

OCR examines a number of factors in evaluating whether a recipient's grievance procedures are prompt and equitable, including whether the procedures provide for the following: notice of the procedure to students and employees, including where to file complaints; application of the procedure to complaints alleging discrimination by employees, other students, or third parties; adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence; designated and reasonably prompt timeframes for major stages of the complaint process; notice to the parties of the outcome of the complaint; and an assurance that steps will be taken to prevent recurrence of any discrimination and to correct its effects.²

OCR's investigation showed the following:

- The complainant transferred to the University at the start of the fall 2008 semester and resided at a residential housing building on campus. There were four dorm rooms on the floor where the complainant resided and each room occupied one corner (quad) of the floor. The complainant shared a dorm room with another female student; another room was occupied by four male students.
- On September 1, 2008, the complainant left an angry voicemail message, using vulgar language, for the University Facilities Department about conditions in her dorm room. On September 14, 2008, the complainant left a message on the voicemail of one of the male students (Student 1) who resided on her floor. In this message, the complainant stated multiple times that she hoped the student's injured shoulder would break and not heal.
- These incidents were brought to the attention of the University Director of Judicial Affairs by the recipients of the telephone messages. The Director investigated by listening to the messages and interviewing the complainant, who admitted leaving the messages. By letter dated October 6, 2008, the Director notified the complainant that she had violated the University's community social misconduct policy. The complainant was placed on residential probation until December 19, 2008, was required to write apology letters to the recipients of her messages,

² See OCR's "Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties" (January 2001). This is available at <http://www.ed.gov/about/offices/list/ocr/docs/shguide.html>.

and was required to receive counseling from the University's Wellness Center. The Director stated that the complainant completed these tasks.

- The Director of Judicial Affairs received complaints in December 2008 against the complainant from the complainant's roommate and one of Student 1's roommates. The Director told OCR that the complainant's roommate said she was uncomfortable because the complainant was fixated on Student 1 and told her stories with sexually explicit content about Student 1. The roommate also said that the complainant would knock on the wall between their room and that of the four male students. Student 1's roommate complained that the complainant made loud sexual sounds in her dorm room that could be clearly heard in his room. Both also complained that the complainant loudly sang songs with sexual content. The Director stated that she investigated by interviewing Student 1 and his roommates, and the complainant's roommate, and by interviewing the complainant on January 26, 2009. The Director stated that the complainant admitted to singing songs that contained sexual content, talking about sex loudly enough that others heard her, and reciting a poem she wrote about Student 1 on poetry night.
- By letter dated January 30, 2009, the Director of Judicial Affairs notified the complainant that she was found to be in violation of the University's community social misconduct policy in regards to these complaints. The complainant was placed on deferred suspension from University residence halls until May 16, 2009, reassigned to a different housing location, and required to write a paper addressing the incidents, how she could have better handled conflict with her neighbors, and how she could have responded differently.
- Two days before the Director's letter, on January 28, 2009, the complainant had met with the University Dean of Student Affairs and submitted a formal written complaint against the four male students who lived across from her. She alleged that they violated the University's community social misconduct policy. In a subsequent meeting with the Dean, the Director of Judicial Affairs, and the complainant's parent on February 3, 2009, the complainant also alleged that these students sexually harassed her. In summary, she alleged that they called her sexually derogatory names, made inappropriate, lewd, and sexist comments towards her, were loud, and played pranks on her.
- The Dean of Student Affairs stated to OCR that he oversees housing and residential programs, student activities, judicial affairs and career development programs. He stated that he is also responsible for handling student complaints of sexual harassment and that he has the option of resolving such a complaint through an administrative review or through a hearing. The Dean stated that he would use the hearing process for more serious cases, and chose to use that

process in this case because of the previous incidents between the complainant and the alleged harassers.

- The University has a policy against sexual harassment and corresponding grievance procedures set forth in Policies 712.3 and 712.31. The Policies state that all reports of sexual harassment will be promptly investigated by either a Sexual Harassment Appeal Officer or by a designated management employee. They state that, after a thorough investigation, the investigator will prepare a written report that states the investigator's conclusions. The report must include the testimony of witnesses and the investigator's ultimate determination and recommended disposition of the complaint, including any corrective action.
- The University Student Handbook sets forth a disciplinary process applicable to students who are alleged to have violated the University code of conduct. The Handbook states that the Dean of Student Affairs is responsible for handling all cases involving violation of University rules, regulations and policies. It states that the Dean may investigate and act on any allegation of misconduct or violation of the code of conduct; or may refer an allegation to his designated representative. The procedures state that a preliminary investigation will be conducted, and if it is determined that a disciplinary action should be initiated, a hearing will be held by a University hearing officer. The disciplinary process also provides for a student conduct review committee which may be convened when a student is appealing a University decision to suspend or expel the student. This committee is composed of University faculty, staff and students selected by the Dean.
- On February 5, 2009 the Dean of Student Affairs provided written notification to the complainant of a hearing with a University judicial committee that would consider the complainant's allegations of sexual harassment and community social misconduct. This letter referred to the disciplinary process outlined in the Student Handbook. It did not refer to the University's sexual harassment grievance procedure.
- The Complainant withdrew from the University on February 5, 2009 and moved out of the residence hall on February 6, 2009.
- The Dean convened a judicial hearing committee that consisted of eight members, including University administrators, faculty, and students. The Dean of Student Affairs facilitated the hearing and participated as an ex-officio officer. The committee conducted a hearing on February 11 and 12, 2009. The hearing committee interviewed separately the complainant, the Director of Judicial Affairs, the four alleged harassers, and the complainant's roommate. Only committee members were present during each interview, unless the interviewee brought a representative.

- OCR reviewed audiotape recordings of the hearing. In summary, the complainant stated that the alleged harassers had leered at her and made sexually derogatory comments to her, threw things at her door and window, left garbage outside her door, put silly string on her door, and destroyed a pumpkin that she and her roommate had decorated and left outside their door. She also described an incident when the alleged harassers, who she claimed were standing in the hallway shirtless and pantless, had their friend attempt to lure her out of her dorm room and when she would not open the door, made a sexually derogatory remark about her. She recounted another incident when three of the alleged harassers frightened her when they made wolf whistles, howled like wolves and crawled and scratched at her door wearing only boxer shorts. The complainant told the Committee that she could not provide any witnesses to support her allegations against the male students.
- The alleged harassers denied all of the complainant's assertions. In addition, they each stated that they did not observe any other students, including their roommates, make any sexually derogatory comments about or towards the complainant. They also stated that they did not observe any of the other incidents described by the complainant.
- The complainant's roommate stated that she did not hear the alleged harassers make any sexually derogatory comments about or towards the complainant. She also stated that she did not observe any of the incidents, except for the items that had been left at their door, that the complainant described.
- The hearing committee met from February 13 to 16, 2009, to deliberate. The Dean of Student Affairs stated that the committee considered the history of actions engaged in by the parties towards each other and their credibility. The Director of Judicial Affairs stated that the committee considered the admissions the complainant had made about her behavior in January. She also said that the committee found the complainant's roommate to be credible. The Dean stated that the committee concluded that three of the male students had said and done things to agitate the complainant, but had not engaged in sexual harassment.
- By letter dated February 18, 2009 the Dean notified the complainant that the committee determined that none of the men engaged in sexual harassment of the complainant, but that three of them had violated the University's community social misconduct policy. The letter stated that the University would sanction the students who had violated the community social misconduct policy.

As stated, the Title IX regulations require recipients to adopt and publish grievance procedures for the prompt and equitable resolution of complaints alleging sex-based discrimination, including sexual harassment. The University has a sexual harassment policy and grievance procedure and it provides notice of the procedure to students in

the Student Handbook. When the complainant made her complaint of sexual harassment, the University did not follow the published sexual harassment procedure to investigate and resolve the complainant's allegations. Instead the University convened a hearing committee composed of students, faculty and administrators to consider testimony by the complainant, the alleged harassers, and other witnesses. Such a process is not described in the sexual harassment grievance procedure. A hearing committee is referenced in the student disciplinary process of the Student Handbook. According to the Student Handbook this committee hearing procedure is for students to appeal University decisions of suspension or expulsion.

When a recipient has established a sexual harassment complaint procedure, it is preferable that the recipient use the specified procedure because the recipient has given notice to students, administrators and staff that this is the manner in which sexual harassment complaints will be handled and because such procedures are usually tailored to issues specific to sexual harassment. While the University did not follow its written sexual harassment procedure in the complainant's case, however, OCR found that the process was sufficient to provide a prompt and equitable resolution of the complainant's allegations of sexual harassment in this instance.

The complainant was able to file her complaint without hindrance or delay, and the University promptly began responding to it. The University gave the complainant written notice of the procedure it intended to follow to address her complaint. OCR found that the University's investigative process, in this case a hearing, was completed within a reasonable time period after the complainant informed the University about her sexual harassment complaint. The University undertook reasonable steps to impartially and reliably determine what occurred. The hearing committee interviewed the students involved, the student's roommate, who would have been likely to witness incidents that occurred in the residence hall, and the Director of Judicial Affairs who had dealt with the complainant and the other students on related issues. The audiotapes did not reveal any significant area that the committee failed to probe or resolve, including specifically the question of whether the male students had subjected the complainant to sexual harassment. After reviewing the audiotapes, OCR concluded that the committee's decision that the male students had not engaged in sexual harassment of the complainant was consistent with the preponderance of the testimony before the committee. For all the above reasons, OCR determined that the University's process in this case was sufficiently prompt and equitable to comply with the basic requirements of 34 C.F.R. § 106.8(b).

Although OCR did not find that the University denied the complainant, in her specific circumstances, a prompt and equitable process, OCR identified several Title IX compliance concerns with respect to the University's procedures for addressing complaints of sexual harassment. Although the University has a specific sexual harassment grievance procedure in Policy 712.3, it does not clearly notify students through its Student Handbook or elsewhere when it will use that procedure and when it will use a different procedure. When, as in this case, issues of both sexual harassment

and other types of misconduct are alleged, it is not clear how the sexual harassment process and the student discipline process will be coordinated.

In addition, the University's sexual harassment grievance procedure in Policy 712.3 does not specify time frames for the major stages of the complaint process, that the complainant will be notified of the decision when a grievance is sustained, or that the University will explain the reasons for its decision. The Policy precludes implementation of individual remedies for a complainant when a complaint is sustained if the alleged offender contests the decision until the appeal is concluded. Further, while the procedure specifies that a Sexual Harassment Appeal Officer or designated management employee will conduct an investigation and issue a report and findings, the Dean of Student Affairs indicated an understanding that he can use either an investigative or hearing process.

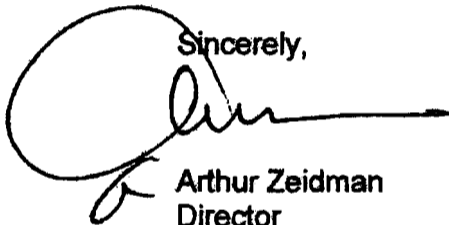
OCR frequently finds that when a university has multiple procedures that are potentially applicable to student complaints that include allegations of sexual harassment, the situation can be confusing for both students and for the administrators charged with responsibility for implementing the procedures. Multiple and overlapping procedures can impede a university's ability to promptly and effectively resolve discrimination complaints. OCR concluded that the University has not provided clear notice of its process for resolving sexual harassment complaints, and that the University's sexual harassment grievance procedure was not written in a manner which ensured that it provided a prompt and equitable process for resolving allegations of sex discrimination. OCR therefore determined that the University was not in compliance with Title IX and its regulations, at 34 C.F.R. § 106.8(b).

The University signed the enclosed Resolution Agreement on December 17, 2009, and agreed to revise and clarify its Policies applicable to complaints of sexual harassment and to disseminate the revised procedures to the University community. OCR has determined that the Agreement, when fully implemented, will resolve the compliance issues identified by OCR. OCR is closing this case as of the date of this letter and will monitor the University's implementation of the Agreement. OCR is concurrently advising the complainant of this resolution. The complainant may file a private suit in federal court whether or not OCR finds a violation.

This letter is a letter of finding(s) issued by OCR to address an individual OCR case. Letters of findings contain fact-specific investigative findings and dispositions of individual cases. Letters of findings are not formal statements of OCR policy and they should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

If you have any questions about this letter, please call Danette Ng, Equal Opportunity Specialist, at (415) 486-5539 or Susan Spelletich, attorney, at (415) 486-5558.

Sincerely,

A handwritten signature in black ink, appearing to read 'Arthur Zeidman', with a large loop at the start and a long horizontal stroke extending to the right.

Arthur Zeidman
Director

San Francisco Office for Civil Rights

Enclosure

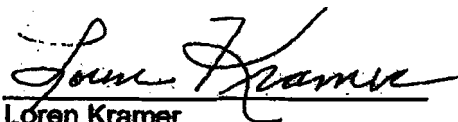
Cc: Ronald Van Blarcom

Concordia University
Resolution Agreement
OCR Case No. 09-09-2056

In order to resolve the compliance issues identified by the U.S. Department of Education, Office for Civil Rights (OCR), in the above-referenced complaint, the Concordia University (University) agrees to implement this Resolution Agreement.

- A. The University will revise its existing policies and procedures applicable to complaints of sexual harassment to ensure that complainants are provided with a prompt and equitable resolution. The University will revise Policy 712.3 and Policy 712.31 in the University Handbook, the applicable sections of the Code of Conduct, and all other documents that address procedures governing complaints of sexual harassment. The revisions will address the following:
1. Clear notification of the names, titles and contact information of the administrators designated by the University to receive complaints of sexual harassment and of how to initiate a complaint.
 2. Only individuals who have completed training in investigative methods and legal standards applicable to sexual harassment will be designated to conduct investigations of sexual harassment complaints.
 3. Reasonable timeframes for each major stage of the complaint process.
 4. Investigations of complaints will include a review of relevant documents identified by the investigator, interviews of the complainant and alleged offender, and interviews of all relevant witnesses identified by the investigator and by the parties.
 5. Written notice to the complainant of the results of the investigation, the decision of the University as to whether sexual harassment occurred, the reasons for the decision, and where applicable, corrective actions that will be taken by the University.
 6. Delete provisions that allow an alleged offender to rebut or appeal, through the sexual harassment complaint procedure, a determination that the alleged offender engaged in sexual harassment.
 7. When an allegation of sexual harassment is sustained, provide for prompt corrective action to address the complainant's circumstances.

- B. The University will submit the proposed revisions to its sexual harassment complaint procedures to OCR for review and approval by February 26, 2010.
- C. OCR will provide its comments, if any, within 60 days of receiving the University's proposed revisions. OCR will clearly identify which of its comments are (1) advisory, and (2) which comments must be addressed by the University to ensure compliance with Title IX. The University will further revise the Policies in accord with any comments provided by OCR that fall within the second category. The University will present a final version of revised Policy Nos. 7.12.3 and 7.12.31 to its Board of Regents at their May 2010 meeting. Should the Board of Regents suggest any changes to the revised Policies as proposed, the University will submit those changes to OCR for further review prior to adoption in accord with this paragraph.
- D. Upon approval, the University will post the revised sexual harassment procedures on the University website, and make copies available in appropriate locations. The University will also review all publications and its website to ensure they include the revised sexual harassment procedures.
- E. Within 30 days of adopting the revised procedures, the University will provide verification to OCR that the University community has been provided with effective notice of the procedures.



Loren Kramer
Interim President

DEC. 17, 2009
Date