



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
REGION I
JOHN W. MCCORMACK POST OFFICE AND COURTHOUSE, ROOM 701
POST OFFICE SQUARE
BOSTON, MASSACHUSETTS 02109-4557

MAR 21 2003

Dr. Frederick W. Woodward, President
Westfield State College
577 Western Avenue
Westfield, Massachusetts 01086-1630

Re: Complaint No. 01-02-2061

Dear Dr. Woodward:

On September 23, 2002, the Office for Civil Rights (OCR) received the above-referenced complaint from (b)(7)(C) (Complainant) against Westfield State College (College) alleging discrimination on the basis of sex. Specifically, the Complainant alleged that the College failed to respond promptly and effectively to her complaint that Professor Bradford Art, Chair of the Philosophy Department (Professor A), sexually harassed her.

OCR accepted this complaint for processing because it falls within the jurisdiction of Title IX of the Education Amendments of 1972 and its implementing regulation found at 34 C.F.R. Part 106 (Title IX), which prohibit discrimination on the basis of sex. The College is subject to the provisions and requirements of Title IX because it receives Federal financial assistance from the U.S. Department of Education.

Summary:

OCR reviewed information submitted by the College and the Complainant. OCR interviewed Professor A, you (President), Professor Elizabeth Preston (Professor B), Equal Opportunity Director and Title IX Coordinator, Pamela Mitchell-Crump (EO), Senior Vice President for Academic Affairs and Chief Administrative Officer, Dr. William Lopes (CAO), and Associate Vice President of Academic Affairs, Dr. Robert Martin (Associate VP). OCR also interviewed the Complainant and left repeated messages with and attempted to interview a witness (Witness) she identified. OCR's review extended to the College's compliance with the procedural requirements of Title IX and the College's response to the incidents alleged. Based upon our review and analysis, OCR identified compliance issues regarding the College's grievance procedure as well as some technical flaws in its written policy. During our discussions with the College, the College agreed to address the compliance issues we identified. A summary of our investigation follows.

Legal Standards:

OCR generally defines sexual harassment as unwelcome conduct of a sexual nature that has the effect of interfering with, denying, or limiting, on the basis of sex, the student's ability to participate in or to benefit from any education program or activity. Title IX therefore prohibits sexual harassment of students.

The regulation implementing Title IX requires that the College designate at least one employee to coordinate efforts to comply with Title IX, including the investigation of grievances alleging noncompliance with Title IX. Further, the regulation requires the College to notify all of its students, parents, employees, and applicants for admission or employment of the name, office address, and telephone number of the employee designated to coordinate compliance efforts under Title IX.

A recipient must also adopt and publish procedures that provide for prompt and equitable resolution of student and employee complaints alleging any actions prohibited by Title IX in its educational programs and activities. In determining whether the College's grievance procedures meet the prompt and equitable requirement under the regulation, OCR considers whether the College has included elements such as: 1) notice to students and employees of the procedure and where to file complaints, 2) an opportunity to resolve the complaint at an informal level, 3) designated time-frames for important steps of the process and final resolution of the complaint(s), 4) notice to parties of the disposition of the complaint(s), and 5) the right of parties to appeal the outcome. OCR also examines: 1) how the information about the procedures is disseminated to students and staff, and 2) whether the relevant College personnel are trained to properly refer students with sexual harassment complaints.

The College's response to a complaint of sexual harassment is adequate if it includes a thorough and objective investigation, prompt and effective action to stop any sexual harassment and prevent it from recurring and, if appropriate, a remedy for any discriminatory effects caused by the harassment.

Facts and Analysis:

OCR learned that consistent with the regulation, the College has a designated Title IX Coordinator. OCR identified concerns about the adequacy of the notice to students and employees of the contact information for the Title IX Coordinator. Specifically, the Student Handbook incorrectly identifies the Title IX Coordinator and her telephone number and business address. OCR also learned that the College has adopted and published grievance procedures that, generally, comply with Title IX's regulatory requirements.

The College has a four-step process for responding to grievance procedures. First, the College offers an optional informal phase. The time-line for completion of the informal phase is 15 working days of the complaining party's initial meeting with the EO, unless it is impracticable. Next, the College offers a three-step formal complaint process. The

Step I process of the grievance procedure is handled by the EO. During Step I, both parties have the opportunity to respond to and rebut evidence presented. Following the completion of the Step I process, either party may appeal the decision to Step II of the grievance procedure.

The CAO is responsible for implementing the Step II process. At the Step II level, the CAO is responsible for ensuring that the Step II appeal was filed in accordance with the Title IX grievance procedures. In addition, the CAO reviews the Step I record, conducts an additional investigation if deemed necessary, informally discusses the determination with the parties and finally, offers the non-prevailing party the opportunity for a hearing. During the Step II hearing, the parties are accorded:

- The right to receive written charges in advance of expected response.
- The right to have a representative to serve in an advisory role only.
- The right to have a response heard and considered.
- The right to present documentary and testimonial evidence.
- The right to question the opposing party and persons giving testimonial evidence.
- The right to rebut documentary and testimonial evidence.
- The right to receive a written decision.

Following the issuance of the Step II hearing decision, either party may file a Step III appeal with the President of the College. During the Step III phase, the President reviews the record, ensures that the complaint and Step III appeal have been filed in accordance with the grievance procedures and makes a final determination on the complaint.

After reviewing the College's grievance procedures, OCR then looked at whether the College implemented its policies and procedures when responding to the Complainant's complaint of sexual harassment.

On April 11, 2002, with the assistance of Professor B, the Complainant reported to the EO that between September 2000 and February 2001 Professor A subjected her to sexual harassment. Following this meeting, the Complainant met with the EO again on April 23, 2002. Interviews with the College staff confirmed that the College did not initiate an informal review but rather waited until the Complainant filed a formal complaint to respond to her allegations, nearly one month after the College was placed on notice of the alleged violation of Title IX. Although the Complainant notified the College of the harassment both on April 11, 2002 and April 23, 2002, the College did not take any actions in response to her complaints under their informal process. The Complainant then filed a formal written complaint against Professor A on May 6, 2002, with the EO's office.

From May 6, 2002 until June 20, 2002, the EO conducted an investigation of the Complainant's allegations, which included interviews of her, the Witness, Professor A, Associate VP, and two persons from whom the Complainant received counseling services during and subsequent to the alleged harassment. In addition, the College provided both

the Complainant and Professor A with opportunities for rebuttal and extensions of time frames for completing her rebuttal responses. Although the grievance procedure states that the Step I process should be completed within 15 days, the grievance procedure also states:

If the EO determines that more than fifteen (15) days are needed, s/he will notify the parties of the anticipated completion date.

On May 24, 2002, consistent with the grievance procedure, the EO notified the Complainant that she granted an extension to Professor A and noted an anticipated completion date of mid-June. Although the grievance procedure provides for notice to both parties, the EO did not provide notice of the anticipated completion date to Professor A. On June 20, 2002, 46 days from the initiation of Step I of the complaint procedures, the EO issued a decision of insufficient evidence to the Complainant and to Professor A. Additionally, the EO informed the Complainant that she had the right to appeal the decision to Step II by notifying the EO of the basis for her appeal within ten working days.

On June 27, 2002, the Complainant wrote a letter to the EO requesting an appeal of her finding. On July 16, 2002, the CAO conducted a hearing. Although the grievance procedure states that both parties have the right to participate in the hearing process, OCR learned that only the CAO, the Complainant, her husband, and her advocate were present at the hearing. Interviews with College staff confirmed that Professor A was not informed of the hearing date and was not afforded the opportunity to participate in the hearing process. As a result, neither the Complainant nor Professor A were afforded the opportunity to question the opposing party and persons giving testimonial evidence, and rebut documentary and testimonial evidence. On August 26, 2002, the CAO issued a decision of insufficient evidence to the Complainant. Although the grievance procedure states that both parties have the right to receive a written decision, the College failed to provide a written decision to Professor A.

On August 31, 2002, by e-mail, the Complainant wrote to the CAO stating, "I absolutely must appeal this finding." On October 18, 2002, she sent a letter to the CAO again appealing the August 30, 2002 decision. On November 5, the CAO erroneously informed the Complainant that her appeal of the Step II decision should be made to the President. On November 6, the Complainant wrote a letter to the President requesting a Step III appeal. On November 25, 2002, a Step III hearing was held and on December 2, 2002, 96 days following the Complainant's first request for a Step III appeal, the President issued a decision of insufficient evidence to her. Once again, although the grievance procedure provides both parties the right to receive a written decision, the College failed to provide a written decision to Professor A.

Based on the investigation, OCR found a number of compliance problems with the College's implementation of its complaint procedures. OCR identified problems with the implementation of Step II and Step III as well as the informal stage of the grievance procedure. Specifically, OCR found concerns about 1) the timeliness of the College's

response to the Complainant's initial complaint of harassment and failure to initiate an informal review of her complaint allegations, 2) the College's failure to implement time-lines consistent with the College's grievance procedures during Step III, 3) the College's failure to conduct a Step II hearing consistent with the requirements of the College's grievance procedure, 4) the College's failure to provide Professor A notice of anticipated completion dates during Step II and Step III, and 5) the College's failure to provide Professor A with copies of written decisions upon completion of the Step II and Step III process.

OCR shared these concerns with the College and based on these discussions, the College agreed to address the above-described Title IX issues. OCR obtained a written commitment, dated March 21, 2003, from the College to address the compliance issues (copy enclosed).

Based on the College's commitment to address the concerns raised by our investigation, OCR is closing this investigation as of the date of this letter. Consistent with OCR's procedures, we will monitor the College's implementation of its commitment. The College will provide a written report to OCR by April 20, 2003 regarding the status of each action in the commitment.

Thank you for your cooperation during the investigation of this complaint. If you have any questions regarding the processing of this complaint, please contact Cynthia Noon, Equal Opportunity Specialist, by telephone at (617) 223-9671 or by electronic mail at: Cynthia.Noon@ed.gov, or me at (617) 223-9699.

Sincerely,



Robert L. Pierce
Program Manager

Enclosure/as stated

cc: (b)(7)(C)

