



U.S. DEPARTMENT OF EDUCATION
THE WANAMAKER BUILDING, SUITE 515
100 PENN SQUARE EAST
PHILADELPHIA, PENNSYLVANIA 19107

OFFICE FOR CIVIL RIGHTS

WENDELLA P. FOX
DIRECTOR
PHILADELPHIA OFFICE
EASTERN DIVISION

June 22, 2004

IN RESPONSE, PLEASE REFER TO: # 03042033

Dr. Charles W. Simmons, Ph.D.
President
Sojourner Douglass College
500 North Caroline Street
Baltimore, MD 21205

Dear Dr. Simmons:

This letter is to notify you of the determination of the Office for Civil Rights (OCR), U.S. Department of Education (the Department), regarding the above-referenced complaint filed against Sojourner Douglass College (the College). The complainant alleged that the College discriminated against her on the basis of sex. Specifically, the complainant alleged that after reporting that she was sexually harassed on campus by a person whom she believed to be a student or employee, the College failed to appropriately address her complaint of sexual harassment.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), and its implementing regulation, at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex by recipients of Federal financial assistance from the Department. Because the College receives Federal financial assistance from the Department, it is subject to the provisions of Title IX and its implementing regulation.

In reaching a determination on this complaint, OCR reviewed information submitted by the complainant and the College and conducted interviews with the complainant and College representatives. As a result of our investigation, OCR has determined that there is insufficient evidence of a violation of Title IX or its implementing regulation with respect to the complainant's allegations. The basis for our conclusion is summarized below.

- ❖ The complainant was a student at the College until January 2004. She participated in the Federal Work Study program and was assigned to the Bursar's Office.
- ❖ Information from the College revealed that the person whom the complainant accused of sexual harassment was also a Federal Work study student (Student A) who is assigned to a Security Desk located at the back of the single building occupied by the College.
- ❖ While the complainant asserted that Student A began sexually harassing her in March 2003 and continued to do so in October 2003, OCR did not make a determination regarding the College's obligation to address earlier incidents as they were not filed with OCR in a timely manner. However, OCR did obtain information regarding the earlier incidents for the purpose of corroborating the types of actions the complainant asserted Student A engaged in.

Our Mission is to Ensure Equal Access to Education and to Promote Educational Excellence Throughout the Nation.

- ❖ The complainant asserted that in March 2003, Student A made a sexually suggestive remark while they were at a vending machine and that approximately two weeks later, he called her sexually explicit names.
- ❖ The complainant asserted that in October 2003, Student A moved the lower part of his body in a sexually suggestive manner. On another occasion, Student A blocked her path in the hallway. The complainant acknowledged that she used profanity in requesting that Student A move out of her path.
- ❖ The complainant maintained that after these later incidents, she spoke with the Vice President of Student Affairs about Student A's actions and was told to put her concerns in writing. During an interview with OCR, the Vice President could not recall ever speaking with the complainant.
- ❖ The College's 2001-2005 student catalog provides that any employee or student who has a complaint of sexual harassment must bring the matter to the Vice President of Academic and Student Affairs/Provost.
- ❖ The College has a Sexual Harassment grievance procedure for use by faculty, staff, or students, under which complaints of sexual harassment can be filed through the Equal Opportunity Officer (EO).
- ❖ Documentation and interviews with representatives of the College revealed that the complainant wrote a letter dated October 7, 2003, to the Vice President of Academic and Student Affairs. In the letter, the complainant recounted an incident of verbal harassment by Student A regarding his use of sexually explicit names and the incident where Student A blocked her path and her use of profanity in requesting that he move. The letter also indicated that the complainant had requested a meeting with the President, through his Assistant. The letter did not state that Student A was sexually harassing the complainant, nor did it describe any other actions of a sexual nature that Student A allegedly engaged in.
- ❖ The President's Assistant recalled the complainant calling and requesting to schedule a meeting between the complainant and the President. The staff member stated that the complainant did not indicate the reason for her call. The President's Assistant also recalled that a few days after speaking with the complainant, the October 7, 2003 letter was received and it was immediately given to the President.
- ❖ Documentation and interviews with College representatives revealed that on October 7, 2003, the President sent a letter sent to the complainant indicating that the matter would be investigated. A memo along with a copy of the letter was sent to the Vice President for Fiscal and Administrative Affairs directing him to conduct an immediate investigation of the complainant's concerns.
- ❖ The Vice President for Fiscal and Administrative Affairs confirmed that he received the memo and a copy of the complainant's letter from the President. He stated that his first action was to meet with the parties and their supervisors to discuss the matter.
- ❖ The Vice President for Fiscal Affairs had two separate meetings; one with the complainant and the Supervisor and another with Student A and his supervisor, the Director of Administrative Services (the Director). Although the Vice President could not recall which meeting occurred first, it appears that he met first with Student A and the Director.
- ❖ During OCR's interview with the Director, he recalled that Student A denied that he engaged in any inappropriate behavior as indicated in the complainant's letter. He recalled that Student A stated that he had spoken to the complainant about repaying money that she had borrowed for the

vending machine and that she had refused to do so. He also stated that the complainant's use of inappropriate language toward Student A was discussed.

- ❖ The Vice President for Fiscal Affairs recalled that during the meeting with Student A, he asked whether Student A had had any type of relationship with the complainant or whether he had made any sexual advances toward the complainant, which Student A denied. He recalled that Student A recounted that the complainant owed him money that she refused to repay and that she had used profanity when informing him of her refusal to repay him.
- ❖ Both the Director and the Vice President for Fiscal Affairs stated that when the meeting concluded, Student A was advised to stay away from the complainant and that if further complaints were made against him, his Work Study contract would be terminated.
- ❖ The complainant contends that during the course of her meeting with her Supervisor, the Supervisor of the Bursar's Office (the Supervisor) and the Vice President of Fiscal Affairs, she recounted the specific incidents of sexual harassment she had encountered from Student A as described earlier in this letter.
- ❖ The complainant also asserted that she had spoken with the Supervisor, about Student A's actions. During OCR's interview with the Supervisor, she could not recall if the complainant mentioned that Student A had made sexually suggestive remarks or if the complainant believed she was being sexually harassed. She did recollect the complainant telling her in October 2003 that Student A was bothering her and recalled entering the building with the complainant on one occasion and inquiring why she no longer spoke to Student A while speaking to others. She indicated the complainant stated it was because Student A was bothering her and saying things to her. However, she said that the complainant never explained the specific manner in which Student A was bothering her.
- ❖ The Supervisor stated that at the meeting, the complainant recounted the incident of Student A blocking her way, acknowledged that she had borrowed small amounts of money from Student A and had informed him that she would not repay it and that she had used profanity in addressing Student A. The Supervisor stated that the complainant was vague about other statements Student A had allegedly made, with the complainant stating only that he says things to her. Lastly, she stated that when the complainant was asked what she meant, she would not elaborate.
- ❖ The Vice President for Fiscal Affairs stated that based on the letter written by the complainant, he did not perceive her concerns as sexual harassment, but as a general complaint. He stated that because of what was in her letter, he initially sought to determine whether the complainant and Student A had a relationship or whether Student A had touched her and then inquired about whether Student A had made any sexual overtures. He indicated the complainant responded negatively and did not state she believed Student A was sexually harassing her. He recalled the complainant only stated that she was fed up with Student A's actions but did not provide any additional specific information about what those actions were.
- ❖ The complainant was asked whether she knew of any witnesses who could substantiate her claims of inappropriate behavior by Student A, but she could not provide any. The Director did ascertain that there were three witnesses to the incident of the complainant's use of profanity in addressing Student A and he did interview them. He indicated that the accounts of the three witnesses were consistent with the account given by Student A. None indicated that they saw Student A engage in any inappropriate behavior toward the complainant.
- ❖ The Vice President for Fiscal Affairs also stated that the parties to the meeting discussed the exchange between the complainant and Student A regarding her refusal to repay money, as well as the complainant's inappropriate use of profanity. Lastly, the Vice President stated that he asked the

complainant if she had additional concerns that she wanted to raise and she responded negatively. The meeting concluded with the complainant being informed that Student A had been told to stay away from her and being advised to stay away from Student A. She was warned about inappropriate outbursts, the use of profanity in the school and borrowing of money on school property. She was also told to inform the Supervisor of further incidents with Student A. Lastly, the Vice President stated he asked the complainant whether she wanted to pursue the complaint any further and she responded negatively. No written response was provided to the complainant regarding her complaint.

- ❖ No further complaints about Student A were received from the complainant.

On the basis of the information summarized above, OCR has determined that there is insufficient evidence to find a violation of Title IX and its implementing regulation with regard to the allegation in this complaint. The Title IX regulation, at 34 C.F.R. Section 106.8(b) requires a recipient to adopt and publish a grievance procedure that provides for the prompt and equitable resolution of sexual harassment complaints. Sexual harassment consists of verbal or physical conduct of a sexual nature, imposed on the basis of sex by an employee or student, which is unwelcome, hostile, or intimidating. In order to determine whether sexual harassment actually occurred, the actions or conduct must be sufficiently severe, persistent, or pervasive as to limit a student's ability to participate in or benefit from an education program or activity or to create a hostile or abusive environment.

OCR found that the College investigated the claims that the complainant made as described in her letter of October 7, 2003. The Vice President for Fiscal Affairs met separately with both the complainant and Student A and their supervisors. However, because the letter from the complainant did not state specifically that she believed she had been sexually harassed nor did it specify any action by Student A that appeared, in his estimation, to be of a sexual nature, the inquiry conducted by the Vice President did not focus on possible sexual harassment. Instead, the Vice President sought to ascertain whether general inappropriate behavior had occurred. The Vice President did also ask whether the parties had had a relationship and finally asked the complainant whether Student A had touched her or made any sexual overtures. The complainant responded in the negative. Thus, the Vice President had no factual basis to infer that the complainant's concerns were about sexual harassment. In addition, because of the actions of the complainant during her encounters with Student A, the Vice President determined that she had engaged in inappropriate behavior toward Student A. Ultimately, the Vice President did not draw any conclusion as to whether or not the complainant had been sexually harassed, because it was not until OCR's inquiry into this matter that the Vice President was made aware that the complainant claimed to have been sexually harassed by Student A. However, the complaint was addressed as a claim of general harassment. Both parties were found to have engaged in misbehavior, and both parties were advised not to have any further contact with one another. Based on the information obtained during this investigation, OCR found that the College did not fail to address a claim of sexual harassment because neither the information provided by the complainant in her letter, her statements in the interview nor any other information before College officials reasonably put the College on notice that she claimed to have been sexually harassed. Thus, we find the College in compliance with Title IX with respect to the allegation of this complaint.

During the course of our investigation, OCR determined that the College has not published the name, location and telephone number of the person that has been designated to coordinate its efforts to comply with Title IX and Section 504 of the Rehabilitation Act of 1973 (Section 504). Further, OCR determined that the College does not have an appropriate notice of nondiscrimination in its publications. Lastly, the College has not adopted and published a general grievance procedure under which complaints of discrimination under Title IX and Section 504 can be filed. The College agreed to sign commitments that it will revise its publications to include an appropriate notice of

nondiscrimination and notice of the designated Title IX and Section 504 coordinator and adopt and publish general Title IX and Section 504 grievance procedures.

On June 21, 2004, OCR received the commitments signed by the College to remedy this compliance concern. Please note that OCR will monitor the College's implementation of the commitments, and that failure to fulfill the terms of the commitments will result in the reopening of our investigation. The College's first monitoring report is due to OCR on September 30, 2004.

This concludes our inquiry regarding this matter and we are closing our files on this complaint effective the date of this letter. This letter is not intended, and should not be construed, to address any other issue concerning the College's compliance with Title IX or its implementing regulation that may exist and is not specifically addressed herein.

Federal regulations prohibit the College from intimidating, coercing, harassing, or discriminating against a complainant or other participant in an investigation. If any such actions occur, the complainant or other participants may notify this office.

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

Thank you for your cooperation in the resolution of this matter. If you have any questions, please do not hesitate to contact me at (215) 656-8549 or Diane Riddick, Equal Opportunity Specialist, at (215) 656-8583.

Sincerely,



Brenda E. Johnson
Team Leader
Philadelphia Office

COMMITMENTS

In order to resolve complaint #03042033 with the Office for Civil Rights, U.S. Department of Education (the Department), Sojourner Douglass College (the College) submits the following commitments.

1. The College recognizes its obligation to comply with Title IX of the Education Amendments of 1972 (Title IX) and its implementing regulation at 34 C.F.R. Section 106.8(a) and Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. 104.7(a) with regard to the designation of persons responsible for coordinating its efforts to comply with these regulations. By July 1, 2004, the College will designate such responsible persons, in accordance with and Title IX and Section 504.
2. The College also recognizes its obligation under Title IX and its implementing regulation, at 34 C.F.R. Section 106.9, and under Section 504, and its implementing regulation, at 34 C.F.R. 104.8(a) and (b) to notify beneficiaries, on a continuing basis, that the College does not discriminate with respect to admission or employment. This notification of nondiscrimination must indicate that it does not discriminate on the basis of race, color, national origin, sex, disability, or age in its programs and activities. In conjunction with the requirements of Commitment #1 above, the nondiscrimination notice will also include the name and/or title, address, and telephone number of the persons designated to coordinate compliance efforts under Title IX and Section 504. By August 30, 2004, the University will ensure that each publication, brochure or electronic web-site for its campuses or programs contain the non-discrimination notice along with notice of the designated individuals and that they are accessible to all persons with disabilities.
3. By August 30, 2004, the College will adopt and publish grievance procedures, in accordance with Title IX and its implementing regulation, at 34 C.F.R. Section 106.8(b), and Section 504 and its implementing regulation, at 34 C.F.R. Section 104.7(b), which ensure that beneficiaries can file complaints regarding actions prohibited under Title IX and Section 504. The grievance procedures will provide for the prompt and equitable resolution of student and employee complaints alleging any actions that would be prohibited by Title IX and Section 504 and their implementing regulations. The College may choose to address all Title IX and Section 504 complaints within the scope of its existing sexual harassment grievance procedure so long as it contains all of these elements. The College will ensure that all employees, students, applicants, and the general public, including persons with disabilities, can use this procedure. At a minimum, the College will notify students and employees of the existence of the procedures by posting the procedures in general areas of the College and/or publishing them in student and employee handbooks and posting them to its electronic web-site. The College must ensure that the web-site is accessible to all persons with disabilities.

Reporting Requirements

1. By September 30, 2004, the College will provide to OCR documentation indicating that it has appointed a person(s) to coordinate efforts to comply with Title IX and Section 504 pursuant to commitment #1. The information will include the name, title, address and telephone number of such person(s).
2. By September 30, 2004, the College will provide copies of its publications and brochures, and/or its web address, pursuant to commitment #2 documenting the publication of the nondiscrimination notice.
3. By September 30, 004, the College will provide to OCR a copy of the grievance procedure that it has adopted pursuant to commitment #3.
4. By September 30, 2004, the College will provide copies of its student and employee handbooks, its web address, and/or documentation of the posting of the grievance procedures, pursuant to commitment #3.


President and/or Designee

V. P Admin & Finance

6/21/04
Date