



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

1999 BRYAN ST., SUITE 1620
DALLAS, TX 75201-6810

REGION VI
ARKANSAS
LOUISIANA
MISSISSIPPI
TEXAS

Reference: 06-12-2139

Dr. David L. Beckley, President
Rust College
150 Rust Avenue
Holly Springs, Mississippi 38635

Dear President Beckley:

On June 27, 2012, the U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, received the above-referenced complaint against Rust College (RC), Holly Springs, Mississippi. The complainant alleges that RC discriminated against her on the basis of her sex (female), in violation of Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681 *et seq.*, and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex.

OCR is responsible for determining whether organizations that receive or benefit from Federal financial assistance from the Department, or an agency that has delegated investigative authority to the Department, are in compliance with Title IX, which prohibits discrimination on the basis of sex. OCR determined that RC is a recipient of Federal financial assistance from the Department. Therefore, OCR has jurisdictional authority to process this complaint for resolution under Title IX.

OCR opened the following issue for investigation:

1. Whether the complainant was subjected to harassment on the basis of her sex (female) between XXXXX as described below and RC failed to take effective and timely action to end the harassment and prevent its recurrence, in violation of 34 C.F.R. § 106.31:
 - a. On XXXXX, during a X---phrase redacted---X to RC, the Alleged Harasser asked the complainant X---phrase redacted---X;
 - b. From XXXXX, the Alleged Harasser asked the complainant for X---phrase redacted---X after class in the hallway outside the classroom;
 - c. On XXXXX, the Alleged Harasser asked the complainant during class whether X---phrase reacted---X.

During the course of this investigation, OCR interviewed the complainant, several students who were present X---phrase redacted---X and in class, the XXXXX, the Instructor, and the Title IX

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Coordinator. Additionally, OCR considered documentation and information provided by the complainant and RC. Based on our review and analysis of the information obtained during this investigation, OCR has determined that there is sufficient evidence to support a finding of a violation of Title IX. The basis for this determination is outlined below.

Issue #1: Whether the complainant was subjected to harassment on the basis of her sex (female) between XXXXX as described below and RC failed to take effective and timely action to end the harassment and prevent its recurrence, in violation of 34 C.F.R. § 106.31: (a) On May 23, 2012, X---phrase redacted---X to RC, the Alleged Harasser asked the complainant X--phrase redacted--X, (b) From XXXXX, the Alleged Harasser asked the complainant for X---phrase redacted---X after class in the hallway outside the classroom, and (c) On XXXXX, the Alleged Harasser asked the complainant during class whether X--phrase redacted--X.

Allegation

The complainant was a student at X--phrase redacted--X at Rust College. The program lasted from approximately XXXXX. There were approximately XXXXX in this XXXXX.

According to the complainant, the sexual harassment consisted of the following actions by one male student (Alleged Harasser) in the XXXXX between XXXXX:

XXXXX:
X---paragraph redacted---X

Classroom:
X--phrase redacted--X, the Alleged Harasser asked the complainant for XXXXX in the hallway after class. Also, on XXXXX, the Alleged Harasser asked the complainant if X--phrase redacted---X.

According to the complainant, on the XXXXX, she reported the sexual harassment to the XXXXX instructor (Instructor).

Legal Standard

Sexual harassment may be a form of sex discrimination that violates Title IX. A sexually hostile environment exists if harassment based on sex is sufficiently severe, pervasive or persistent to limit or interfere with an individual's ability to participate in or benefit from the school's programs. When investigating or otherwise resolving incidents of sexual harassment of students, OCR will also consider whether: (1) the school has a policy prohibiting sex discrimination under Title IX and effective grievance procedures; (2) the school appropriately investigated or otherwise responded to allegations of sexual harassment; and (3) the school has taken immediate and appropriate corrective action responsive to the sexual harassment, including effective actions to end the harassment, prevent its recurrence and, as appropriate, remedy its effects.

Consistent with applicable case law and OCR policy guidance, OCR reviewed whether: (1) RC has a policy prohibiting sex discrimination under Title IX and effective grievance procedures; (2)

RC appropriately investigated or otherwise responded to allegations of sexual harassment; and (3) RC took immediate and appropriate corrective action responsive to the sexual harassment, including effective actions to end the harassment, prevent its recurrence and, as appropriate, remedy its effects.

Investigative Findings

a. Whether the school has a policy prohibiting sex discrimination under Title IX and effective grievance procedures

OCR began its analysis by reviewing RC’s notice of non-discrimination to determine whether the school has a policy prohibiting sex discrimination under Title IX. The applicable Title IX regulation states that a recipient’s notice of non-discrimination should state, “that it does not discriminate on the basis of sex in the educational program or activity which it operates and that it is required by Title IX not to discriminate in such a manner” (34 C.F.R. section 106.9(a)).

While RC’s Notice does include some phrases discussing discrimination, such as: RC wants an “[e]nvironment...free of discriminatory, inappropriate and disrespectful conduct or communication” and “[t]he college is concerned about discrimination,” there is no language explicitly stating that RC does not discriminate on the basis of sex in its programs or activities and that it is prohibited from discriminating on the basis of sex. Thus, RC’s notice of non-discrimination is insufficient because it does not contain the required language.

Next, OCR examined RC’s grievance procedures. The applicable Title IX regulation states that a recipient’s grievance procedures must provide for “prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited by this part” (34 C.F.R. section 106.8(b)). While a recipient need not adopt a separate set of grievance procedures specifically to handle complaints of sexual harassment, the grievance procedures to handle discrimination complaints must provide effective means to prevent and respond to sexual harassment. Below is a discussion of the items OCR believes need to be corrected or included in RC’s grievance procedures for sex discrimination complaints (including complaints of sexual harassment):

i. Notice of grievance procedures and how to file a complaint

While the grievance procedures do provide the contact information for both the Title IX Coordinator and the Section 504 Coordinator and clarify that people who believe they have been subjected to discrimination should use the grievance procedures, the language in the procedures is confusing as to which RC staff member a victim of sexual harassment should contact. The portion of the grievance procedures which identifies the individuals to whom each type of discrimination complaint should be filed states as follows:

“Students will make said discrimination known to the Dean of Students. Employees will make said discrimination known to the immediate supervisor of the accused discriminator. Non-employees or students will make said

discrimination known to the Coordinator of the Title IX (sexual harassment), or the Section 504 Coordinator (disability).”

A reasonable interpretation of the above language is that any student who believes he or she has been subjected to sexual harassment must file a complaint with both the Dean of Students and the Title IX Coordinator. However, the Title IX Coordinator explained that this interpretation is not correct. The Title IX Coordinator explained that students of RC are to file sexual harassment complaints with the Dean of Students, non-employees and students who do not attend RC are to file sexual harassment complaints with the Title IX Coordinator, and employees of RC are to file sexual harassment complaints with their immediate supervisor, but can also file a complaint with the Title IX Coordinator. Thus, if a RC student filed a complaint of sexual harassment, the Dean of Students would investigate the claim. If a non-employee or student who did not attend RC filed a claim of sexual harassment, the Title IX Coordinator would investigate. If an employee of RC filed a charge of harassment based on sex, either that employee’s immediate supervisor or the Title IX Coordinator would investigate depending on which individual received the complaint. The current language in RC’s grievance procedures is confusing as to the appropriate contact person an individual should contact if he or she wants to file a complaint of sex discrimination or sexual harassment. RC should change its grievance procedures to clarify whom a student, employee or visitor/third party should contact to file a complaint of sexual harassment.

ii. Application of the procedure to complaints of harassment by employees, students, or third parties

The Title IX Coordinator stated that the grievance procedures cover claims by employees, students of other institutions, and third parties. However, OCR’s review of RC’s grievance procedures shows that, while they do state that they apply to claims of discrimination based on sex (including claims of sexual harassment), they do not state that they apply to claims of harassment by employees, students and third parties. RC should change its grievance procedures to clarify that they apply to claims of harassment by employees, students and third parties.

iii. Adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence

The Title IX Coordinator provided an overview of RC’s investigation process which includes steps such as: interviewing the complaining party and accused, reviewing any video evidence (if it exists), and interviewing other witnesses listed by either the complaining party or accused. According to the Title IX Coordinator, she makes every effort to complete her investigations of sexual harassment claims within one week of receiving them. The Title IX Coordinator then meets with the complaining party to discuss her investigative findings and recommended punishment. If that resolves the issue, the Title IX Coordinator would issue a final letter summarizing her findings and the final resolution. If the complaining party does not agree with the initial recommended punishment, the matter is sent to the President’s Executive Council (which consists of the heads of the six main divisions on campus, such as the Vice-President of Academic Affairs and the Vice-President of Finance) whose members personally meet within 72

hours from the time the complaining party notifies the Title IX Coordinator at the investigative level that a proposed punishment will not resolve the complaining party's concern. Within 72 hours of the meeting of the President's Executive Council, the complaining party and accused are notified of the Council's final decision.

The Title IX Coordinator clarified that both parties have the opportunity to present evidence and list witnesses they believe have relevant information. The grievance procedures do state that RC will investigate charges, that non-resolved charges will be forwarded to the Executive Council, and that the Executive Council will meet and inform the complaining party of the final decision. However, the grievance procedures do not inform individuals that they have the opportunity to present witnesses and other evidence. RC should change its grievance procedures to clarify that both the complaining party and the accused have the opportunity to identify witnesses and present evidence to RC during an investigation.

iv. Designated and prompt time frames for major stages

RC's Title IX Coordinator provided OCR with an overview of the steps she takes to investigate a complaint of sexual harassment which have been summarized in the section above detailing RC's investigative process. Based on the information above, it appears that allegations of sexual harassment will be investigated within one week. If the recommended punishment at this level does not resolve the complaining party's concern, the matter is forwarded to the Executive Council for consideration and they issue a final decision within approximately 6-7 days of receipt of the appeal. However, RC's grievance procedures do not include any of this information in writing. RC should revise its grievance procedures to clarify the major steps it will take as part of its investigation and the specific number of days RC will take to complete the major steps (*e.g.*, time to acknowledge receipt of a written complaint, general timeframe to complete an investigation, etc.)

v. Written notice to both parties of the outcome of the investigation

Both the complaining party and the accused are provided with notice of the final decision from the Executive Council within 72 hours of the Executive Council's meeting to discuss the sexual harassment allegation. While the grievance procedures do state that the Executive Council will notify the complaining party of its actions within 72 hours after receiving the report, they do not clarify that the accused will also be notified of the decision or state that the notice will be provided in writing. RC should revise its grievance procedures to clarify that both parties will be notified in writing of the outcome of the investigation.

vi. Assurance that school will take steps to prevent recurrence and correct discriminatory effects on complainant and others

According to the Title IX Coordinator, if RC concludes that sexual harassment occurred, RC would take the appropriate steps to prevent recurrence of the harassment and correct the effects on the complaining party. However, RC's grievance procedures do not include this language. RC should revise its grievance procedures to include an assurance that RC will take

steps to prevent recurrence of any sexual harassment and correct its discriminatory effects on the complaining party and others.

Additionally, OCR strongly discourages allowing parties to personally cross-examine each other during the grievance process. Other discouraged practices include requiring the complainant to personally appear in a hearing or otherwise requiring other face-to-face contact between the complainant and the alleged harasser. Point 5 of RC's grievance procedures states that, "Confidentiality will be maintained, but the accused has the right to face the accuser in a hearing." The Title IX Coordinator clarified that someone from her office would always be present in such a meeting and that the complaining party would not have to participate in the meeting if he/she feared for their safety. The Title IX Coordinator stated that, even if the complaining party did not want to participate in a meeting with the accused, RC would continue its investigation. However, this information is not clearly stated in the grievance procedures, which could lead a reasonable person to assume he or she would have to face the accused in a hearing or the complaint would not be investigated. RC should revise its grievance procedures to include an assurance that the complaining party would not have to appear in a hearing room with the accused.

OCR's investigation has found that RC's grievance procedures for responding to complaints of sexual harassment are not effective for the reasons stated above.

b. Whether the school appropriately investigated or otherwise responded to allegations of sexual harassment

Once a school has notice of possible sexual harassment, it should take immediate and appropriate steps to investigate or otherwise determine what occurred. The specific steps in an investigation will vary depending on factors such as: the nature of the allegations, the source of the complaint, and the age of the student involved. In all cases, the inquiry must be prompt, thorough, and impartial.

In this case, OCR could not corroborate that RC had notice of sexual harassment. A recipient has notice of harassment if a responsible school employee actually knew or, in the exercise of reasonable care (*i.e.*, would have learned of the harassment if they had exercised reasonable care or made a reasonably diligent inquiry), should have known about the harassment. OCR has stated that a responsible employee includes any employees who has the authority to take action to redress the harassment, who has the duty to report to appropriate school officials sexual harassment or any other misconduct by students or employees, or an individual who a student could reasonably believe has this authority.

In this case, OCR interviewed both the XXXXX of the X---phrase redacted---X and the primary Instructor, who were the RC staff present at those locations, to try to corroborate the complainant's allegations. The X---remainder of paragraph redacted--X.

X---sentences redacted---X. Based on the information above, OCR did not find sufficient evidence to demonstrate that the behavior witnessed by the XXXXX and Instructor provided constructive notice of a sexually hostile environment.

Regarding other possible sources of notice (e.g., newspaper reports, other complaints, etc.), the complainant alleges that she notified the Instructor on XXXXX of the sexual harassment by the Alleged Harasser. The Instructor informed OCR that the complainant did talk to him about the Alleged Harasser's behavior. However, according to the Instructor, the complainant X---phrases redacted---X. Based on this information, OCR was unable to verify whether the complainant informed the Instructor that she was being "sexually harassed" or XXXXX by the Alleged Harasser. The complainant admits that she did not report any harassment to any other RC employee. OCR interviewed both the Program Director and Title IX Coordinator and they confirmed that the complainant never notified them that she felt like she was the victim of sexual harassment. Thus, OCR has determined that RC did not have notice of the alleged sexual harassment.

1. Legal standard for sexual harassment

Even if OCR assumed, without deciding, that RC had notice of the incidents described above, they would have to be sufficiently severe, pervasive or persistent to limit or interfere with the complainant's ability to participate in or benefit from the school's programs to constitute sexual harassment. OCR examined the incidents from both a subjective and objective perspective. It is the totality of the circumstances in which the behavior occurs that is critical to determine whether a hostile environment exists. Some of the factors OCR will consider are the type, duration, and frequency of the harassing conduct as well as the identity of and relationship between the complaining party and the accused.

OCR interviewed three students in the X---phrase redacted--X, the program's Instructor, Program Director, and the Title IX Coordinator.

With respect to the incidents during the XXXXX, OCR interviewed the XXXXX and two students (Student #1 and Student #2) who were XXXXX during XXXXX. Although the recollections of the witnesses differed on the XXXXX by the Alleged Harasser, all recalled the Alleged Harasser asking the complainant XXXXX or something along those lines X---phrase redacted---X. Student #1's impression was that X---phrase redacted---X. The witnesses agreed that in each instance, the complainant X---phrase redacted---X. According to the XXXXX, the complainant X---remainder of paragraph redacted---X.

Regarding the complainant's claim that the Alleged Harasser XXXXX during the XXXXX,¹ both the XXXXX and Student #1 state that X---phrase redacted---X, but also stated that the Alleged Harasser was X---sentences redacted---X. Based on the facts listed above, OCR's investigation was able to corroborate that the Alleged Harasser asked the complainant X---phrase redacted---X. The information obtained by OCR was inconclusive as to whether the Alleged Harasser X---phrase redacted---X.

Regarding the classroom incidents, OCR interviewed three students in the class (Student #1, Student #2 and Student #3) and the Instructor. Both Student #1 and Student #3 XXXXX, but

¹¹ During the rebuttal phone call, the complainant stated that the Alleged Harasser X---phrase redacted---X. However, because the complainant's initial allegation to OCR was that the Alleged Harasser X---phrase redacted---X, OCR's investigation covered that claim.

Student #2 says that X---phrase redacted---X. The Instructor said that X---sentences redacted---X. Based on the information listed above, OCR's investigation was able to corroborate the complainant's allegation that the Alleged Harasser X---phrase redacted---X and assume as true the complainant's allegation that the Alleged Harasser X---phrase redacted---X in the hallway outside of class.

To determine if the corroborated incidents of sexual harassment were sufficiently severe, pervasive or persistent to limit or interfere with an individual's ability to participate in or benefit from the school's programs, OCR examined the incidents from both a subjective and objective perspective. It is the totality of the circumstances in which the behavior occurs that is critical to determine whether a hostile environment exists. Some of the factors OCR considered were:

1. *The degree to which the conduct affected one or more students' education:*

In this case, the complainant stated that she was X---remainder of paragraph redacted---X;

2. *The type, duration, and frequency of the harassing conduct:*

The more severe the conduct, the less the need exists to show a repetitive series of incidents, particularly if the harassment is physical. OCR's investigation was able to corroborate that the Alleged Harasser X---remainder of paragraph redacted---X;

3. *The identity of and relationship between the alleged harasser and the accuser:*

Due to the power a professor or teacher wields over a student, inappropriate conduct by that person towards a student would be more likely to create a hostile environment than similar conduct by another student. In this case, both the Alleged Harasser and complainant were college students;

4. *The number of individuals involved:*

Sexually harassing conduct can be committed by an individual or group. Depending on the specific facts, the effects of the conduct may be more or less severe if committed by an individual or a group. In this case, there was one Alleged Harasser. X---remainder of paragraph redacted---X.

5. *Other incidents at the school:*

A series of incidents at the school, not involving the same students could, if taken together, create a hostile environment, even if each incident by itself would not be sufficient. During the 2011-2012 and 2012-2013 school years, RC has received a total of four allegations of sexual harassment, including the allegations raised in this OCR complaint. OCR reviewed the three other incidents of sexual harassment that have occurred at RC within the past two school years (2011-2012 and 2012-2013). During the XXXX school year, RC received two complaints of sexual harassment. The first

complaint was filed by a student against one of their teachers. The student alleged that their teacher made inappropriate comments and made gestures of a sexual nature. After an investigation, RC determined that it had insufficient evidence of sexual harassment, but XXXXX the teacher for XXXXX for inappropriate behavior. The second complaint from the XXXXX school year was filed by a professor against their supervisor alleging that the supervisor made inappropriate comments and sexual-related gestures. RC investigated the claim, but found that actionable sexual harassment did not occur. Nevertheless, RC changed the professor's supervisor.

During the XXXXX school year, RC received notice of one allegation of sexual harassment involving a student against their professor. However, that student reported the incident to the local police and not to RC. RC first received notice of this incident from the police department on XXXXX. Within three days of receiving notice of the allegation, RC determined that it had sufficient information to XXXXX of the alleged harasser. OCR has concluded that these three other accusations of sexual harassment, individually or taken together, do not create a hostile environment for the complainant.

OCR's investigation was able to corroborate that the Alleged Harasser either X---sentences redacted---X. Based on the information above, OCR has determined that there is insufficient evidence to support a finding that the harassing conduct was sufficiently severe, pervasive or persistent to limit or interfere with the complainant's ability to participate in or benefit from the school's programs.

- c. *Whether the school has taken immediate and appropriate corrective action responsive to the sexual harassment, including effective actions to end the harassment, prevent its recurrence and, as appropriate, remedy its effects*

If a recipient determines that sexual harassment occurred, it should take reasonable, timely, age-appropriate, and effective correction action. If a recipient knows or reasonably should know about the harassment, it has a responsibility to take immediate effective action to end the harassment, prevent its recurrence and address its effects. These steps should be reasonable, timely, age-appropriate, and effective. A series of escalating consequences may be necessary if the initial steps are ineffective in stopping the harassment. Steps should also be taken to eliminate any hostile environment that has been created. A recipient should take steps to prevent further harassment and prevent any retaliation against the student who filed the complaint or provided information as witnesses. Some examples of remedies include: ensuring the complainant and alleged perpetrator do not attend the same classes, providing counseling services, and providing academic support services such as tutoring. In this case, because the corroborated actions did not rise to the level of actionable sexual harassment, there was no legal obligation by RC to take any corrective action.

Conclusion

The evidence obtained by OCR shows that: (1) RC's revised sexual harassment policy does not contain appropriate non-discrimination language and RC's grievance procedures are missing certain information, and (2) RC did not receive notice of the alleged sexual harassment.

To address the compliance concerns regarding its notice of non-discrimination and its grievance procedures, RC submitted the attached Resolution Agreement (Agreement) to OCR on October 7, 2013 which addresses this issue. OCR has determined that the Agreement submitted by LC, when fully implemented, will resolve the compliance issues listed above.

OCR will monitor the implementation of the Agreement by RC to determine whether the commitments made by RC have been implemented consistent with the terms of the Agreement. Although verification of the remedial actions taken by RC can be accomplished by a review of reports and other documentation provided by RC, in some instances, a future monitoring site visit may be required to verify actions taken by RC.

This concludes OCR's investigation of the complaint and should not be interpreted to address RC's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and 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. The complainant may file a private suit in federal court whether or not OCR finds a violation.

Please be advised that RC may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the complainant may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and other related correspondence and records upon request. In the event we receive such a request, we will seek to protect, to the extent provided by law, personally identifiable information which, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

If you have any questions, please feel free to contact Richard J. Cho, the attorney-investigator, by telephone at (214) 661-9631 or Paul Coxe at (214) 661-9600.

Sincerely,

Taylor D. August, Regional Director
Office for Civil Rights
Dallas Office

Attachment