



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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SAN FRANCISCO, CA 94105

REGION IX  
CALIFORNIA

June 6, 2016

Geraldine M. Perri  
President  
Citrus Community College  
1000 W. Foothill Blvd.  
Glendora, CA 91741

(In reply, please refer to case # 09-16-2079)

Dear President Perri:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against Citrus College (College). The Complainants alleged that the College discriminated against them on the basis of sex. Specifically, OCR investigated whether female student employees at the College's bookstore and café were subjected to harassment by a College employee based on sex, and whether the College failed to respond appropriately and effectively to notice of the 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 bases of sex in programs and activities operated by recipients of Federal financial assistance. The College receives funds from the Department and is subject to Title IX and the regulation.

To investigate this complaint, OCR conducted interviews and reviewed documents and other information provided by the Complainants and the College. After careful review of the information gathered in the investigation, OCR concluded that the College did violate Title IX with regard to the issue OCR investigated. The legal standards, facts gathered, and the reasons for our determinations are summarized below.

### **Legal Standards**

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

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

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

#### *Sexual Harassment of a Student by an Employee*

The College provides program benefits, services, and opportunities to students through the responsibilities given to employees. If an employee who is acting, or reasonably appears to be acting, in the context of carrying out these responsibilities either (1) conditions an educational decision or benefit on a student's submission to unwelcome sexual conduct, or (2) engages in sexual harassment that is sufficiently serious to deny or limit a student's ability to participate in or benefit from the program, the college is responsible for the discriminatory conduct whether or not it has notice.

#### *College's Responsive Action*

Under Title IX and the regulations, if a student is sexually harassed by an employee, the College is responsible for determining what occurred and responding appropriately. OCR evaluates the appropriateness of the responsive action by assessing whether it was prompt, thorough, and effective. What constitutes a reasonable response to harassment will differ depending upon the circumstances. However, in all cases the College must conduct a prompt, thorough and impartial inquiry designed to reliably determine what occurred. If harassment is found, it should take reasonable, timely, age-appropriate, and effective corrective action, including steps tailored to the specific situation. The response must be designed to stop the harassment, eliminate the hostile environment if one has been created, remedy the effects of the harassment on the student who was harassed, and prevent the harassment from recurring.

Other actions may be necessary to repair the educational environment. These may include special training or other interventions, the dissemination of information, new policies, and/or other steps that are designed to clearly communicate the message that the College does not tolerate harassment and will be responsive to student reports of harassment. The College also should take steps to prevent any retaliation against the student(s) who made the complaint or those who provided information.

#### *Procedural Requirements*

The Title IX regulations establish procedural requirements that are important for the prevention and correction of sex discrimination, including sexual harassment. These requirements include adoption and publication of grievance procedures providing for the prompt and equitable resolution of complaints of sex discrimination (34 C.F.R. §106.8(b)), distribution of a notice of nondiscrimination (34 C.F.R. §106.9) and appointment of a Title IX Coordinator (34 C.F.R. § 106.8(a)).

With respect to the notice of nondiscrimination, the regulation requires the College to take specific and continuing steps to notify applicants for admission and employments, student and parents, employees, sources of referral of applicants, and all unions or professional organizations holding collective bargaining or professional agreements with the college that it does not discriminate on the basis of sex in its education programs and activities, including with

respect to employment. The notice of nondiscrimination must include that inquiries concerning Title IX may be referred to the Title IX Coordinator or to OCR and must identify and include contact information, including the name, address, phone number and email, for the Title IX Coordinator.

With respect to the Title IX Coordinator, the regulation requires that the College designate at least one employee to coordinate compliance with the regulations, including coordination of investigations of complaints alleging noncompliance. This provision further requires that the recipient notify all of its students and employees of the name (or title), office address, and telephone number of the employee(s) so designated; recipients must also notify all students and employees of the email address of the Title IX Coordinator(s). The College must also ensure that employees designated to serve as Title IX coordinators and all persons involved in implementing its grievance procedures have adequate training or experience in handling sexual harassment complaints and in the operation of its grievance procedures.

### **Findings of Facts**

The following facts are relevant to OCR's analysis. The College has a bookstore and café on campus. The bookstore sells textbooks and other supplies. The bookstore is staffed by eight employees (some who work on a part-time basis) and approximately 20 student employees. Some of the students also work at the café. At the beginning of each semester, the College hires additional students on a temporary basis to assist during the busiest periods.

On October XX, 2015, some students employed at the campus bookstore told one of the bookstore employees that they have been witnessing the XXXXXX XXXXXXXXXXXX (Respondent), who has been employed at the bookstore for approximately XX years, holding his cellphone under the skirts and shorts of female student customers to secretly take their pictures and/or video tape them. Specifically, the students alleged that the Respondent would stand near female students and pretend to either stock items on the shelves or kneel down to tie his shoe laces and hold his cellphone under the skirts and shorts of female students to inappropriately take their pictures.

The Manager, who oversees the bookstore and café, confirmed to OCR that the bookstore employee immediately notified him about the allegations made by the student employees. The Manager stated to OCR that he did not interview any of the student employees but told the bookstore employee to tell the students to go to Human Resources (HR) to report the matter. On the same day, one of the student employees went to HR and met with the Title IX Coordinator, who is also the College's Manager of HR and Staff Diversity, and the Director of HR. The student told them she witnessed the Respondent taking pictures under the skirts of female students in the bookstore and that he flirted with the female student employees. The College informed OCR that this was the first allegation of misconduct it received against the Respondent.

OCR interviewed a number of student employees (male and female) and one former student XXXXXXXXXXXX XXXX XXX XXXXXXXX XXX XX XXXXXXXXXXXX XXXXXXXX XX XXX XXXXXXXXXXXX XX X XXXXXXXXXXXX XXXXX. They told OCR that the Respondent took inappropriate pictures of female students at the bookstore, regularly flirted with female students, and made inappropriate sexual comments to them. One student stated that the Respondent used his cellphone to take pictures under the skirts of foreign language students who were as young as nine to 13 years old. Some of the female students also told OCR that they were scared and nervous around the Respondent because he touched them inappropriately (on the thigh, pulling bra straps, touching their bare skin and hair). The students also stated that they warned new female student employees not to wear skirts, shorts or tank tops when they come to work. The students further stated that they were not comfortable being around the Respondent and that it was stressful trying to find ways to avoid him during their shift at the bookstore. In addition, the Respondent's desk was located next to the electronic time clock and the students told OCR that they were anxious clocking in and out if the Respondent was at his desk because of his inappropriate behaviors.

Some of the students also stated that they witnessed the Respondent taking inappropriate pictures with his cellphone for two to three years, but that they did not come forward earlier because they were not comfortable going to the Manager because they did not feel that they could trust him. They stated that they did not know who else to report the allegations to on campus. Some of the female students, who were inappropriately touched by the Respondent, told OCR that they did not know that the Respondent's behavior was sexual harassment, only that what he did shocked them, made them feel uncomfortable and scared.

Although the College told OCR that Respondent did not supervise the student employees, OCR learned that he had the ability to make revisions to their timesheets. The students told OCR that they did not come forward to report Respondent sooner because they feared that he would retaliate and tamper with their timesheets. Students also stated to OCR that Respondent told them that he had supervisory authority over them and that they believed that he would have them terminated from their positions, if they came forward with their allegations. In addition, the students stated that they tolerated the Respondent's behavior because they needed to work to stay in school and that did not want to risk losing their jobs.

Three female students also told OCR that they were scared when Respondent caught them watching him take the inappropriate pictures with his cellphones because they were worried that the Respondent would say or do something to them because of what they witnessed. These students further stated that it was difficult for them to concentrate on their studies each time this happened because they were anxious as to how Respondent would react. One of the female students told OCR that after she told her parents what the Respondent was doing in the bookstore and how she was having trouble studying because she was scared of the Respondent, her parents told her to report the matter to the College because they feared for her safety.

Two of the bookstore employees OCR interviewed stated that the Respondent regularly made sexual comments and jokes in front of them, but that they did not witness him making these kinds of jokes near students nor did they witness him taking pictures of any of the female customers. One bookstore employee told OCR that the Respondent regularly flirted with the female student employee when they walked by his desk and thought the Manager may have witnessed this, but was not sure. The Manager denied witnessing the Respondent flirt with the female student employees, take pictures of the female students or make any sexual comments to them. The Manager described the Respondent as being “immature” and stated that he joked with the students, but the jokes he witnessed were “juvenile” in nature and not sexual.

The Title IX Coordinator and HR Director confirmed to OCR that on October XX, 2015, a student employed at the bookstore, reported to them that the Respondent was using his cellphone and taking pictures up the skirts of foreign language students, some who were minors, when they were in the bookstore to shop. Based on the preliminary information provided by this student, the Title IX Coordinator and the HR Director believed that the students employed at the bookstore were only witnesses to the harassment and not victims of the harassment themselves. The College immediately notified the police department about the allegation raised by the student and two officers came to College to begin a criminal investigation. The officers also notified the College that they would obtain a search warrant for the Respondent’s personal cellphone and computer.

After obtaining the search warrants, the police officers came to the bookstore on October XX, 2015 and took the Respondent’s work computer. On that same day, the College placed the Respondent on paid administrative and directed him to stay away from the campus and not to have contact with students.

After the first student came forward on October XX, 2015, other student employees from the bookstore went to HR to report their experiences with the Respondent. The HR Director told OCR that it was at this time that the College became aware that the student employees were not just witnesses to the Respondent’s misconduct but that they were also victims. On November X and X, 2015, the Title IX Coordinator and the HR Director interviewed seven student employees, some in groups, and some individually. One female student described how the Respondent touched her inappropriately (touching her thigh, snapping her bra strap), while other students stated that they witnessed the Respondent using his phone to take pictures and/or videotape female students under their skirts.

The HR Director told OCR that the College was aware of its requirement under Title IX to immediately investigate the allegations raised by all of the students, however, the detective conducting the criminal investigation instructed the College not to begin its investigation until the criminal investigation was complete. OCR spoke to the detective and confirmed that he told the College not to interview any of the student employees or staff members of the bookstore until the criminal investigation was completed because he did not want the evidence to be “tainted.”

The student employees OCR interviewed stated that from the time the police officers came to the bookstore on October XX, 2015 and during the month of November 2015, they believed that the College was not doing anything to investigate their allegations or to provide them with any support after coming forward to report the Respondent. The students also stated that the Manager said nothing to them about what was happening and that they did not receive any updates from the College as to what they were doing to address the complaints and protect them from any potential retaliatory actions by the Respondent or others.

The students also stated that the XXXXXXXXXXXX XXXX XXXXXX at the College as XXX XXXXXXXXXXXX XXX XXX XXXX and that they were concerned that XXX would try to find out who reported the Respondent so that he would take retaliatory action against them. In addition, the students stated that XXX XXXXXX was on the same floor as the academic counseling offices and they did not want to meet with their counselors to discuss their graduation requirements because they feared running into XXXXXXXXXXXX XXXX. Four students also told OCR that once they notified the College about Respondent's behavior they had difficulty focusing on their classes because they believed Respondent would find out who reported him and retaliate against them.

During the month of November 2015, the detective met with several students and regular bookstore employees to show them pictures and videos that were retrieved from the Respondent's cellphone and personal and work computers. The students and regular bookstore employees stated that they felt traumatized as a result of viewing of the pictures, including because the review revealed that many pictures had been taken over a lengthy period of time. They also learned from the detective that the Respondent hid a camera in the dressing room of the café to secretly videotape female students changing. The students told OCR that the detective asked them to look at the photos to see if they could identify anyone, but that this was difficult to do because the photos included body parts, but not the face of the victim. The students told OCR that the College should have been more supportive of them by providing them with counseling services to deal with what they were going through during the criminal investigation.

The Title IX Coordinator and the HR Director told OCR that they informed every student they interviewed of their Title IX rights, the College's complaint procedures, and the Colleges policies on sexual harassment and sexual assault. They stated that they provided each student with the College's Sexual Misconduct Information pamphlet, which includes contact information for the student health center and off-campus resources, including counseling services. Three students OCR interviewed, however, stated that they were not provided with this information when they met with the Title IX Coordinator on October XX and XX, 2015. One student stated that the Title IX Coordinator mentioned that help was available on campus, but the student was not referred to a counselor or told where she should go to seek assistance.

The College informed OCR that the Title IX Coordinator's contact information and the College's procedures were available to students through its website and school catalog. OCR reviewed the College's website and found that it included the Title IX Coordinator's name, title, phone number and e-mail address and its procedures. However, the information was hard to find, as

there is no link from the homepage to this information. OCR also reviewed the College's course catalog and the schedule of classes and found that they included the Title IX Coordinator's contact information and a summary of grievance procedures. The College also stated that all of the student employees on campus were given a copy of the College's procedures at the time of hire. In addition, the Title IX Coordinator stated that the information was provided to students during orientation, training for student athletes, and during a campus wide sex 101 training. The sex 101 training, however, was not mandatory for students.

All of the students OCR interviewed stated that they did not know what a Title IX Coordinator did nor did they know that the College had grievance procedures to address incidents of sexual harassment and assault. They also stated that they did not receive any sexual harassment training and were not aware that Title IX prohibited sexual harassment or of how to file a complaint or locate the Title IX Coordinator on campus. They stated that they were unaware that the College's grievance procedures were available in the Student Handbook, Catalog, and website. Most of the students stated that this was their first job and that they did not know what to do in this situation. The students also stated that there was nothing posted in the bookstore regarding their Title IX rights and that they recalled receiving some paperwork when they began working at the bookstore/café but were unaware that the documents included any information about sexual harassment.

The two bookstore employees told OCR that they have been working at the College for over XX years and had not received any sexual harassment training. As a result, the employees did not know how to support the students nor did they know that the College had a Title IX Coordinator or grievance procedures to address sexual harassment and assault complaints. The Manager told OCR that he has attended sexual harassment trainings and that it was his understanding that he was to refer such complaints to HR, where the Title IX Coordinator is located. The Manager also stated that he did not talk to the student employees regarding their allegations because he wanted the students to relay the information directly to the Title IX Coordinator.

The students told OCR that the first time they learned about the College's policies on sexual harassment and assault and the resources available to them was on December X, 2015, when the HR Director and the Vice President (VP) of Student Services came to the bookstore to meet with some of the student employees and staff members to inform them that the Respondent would not be returning and the College was looking into the matter. During that meeting, the students were provided with a copy of the Sexual Misconduct Information pamphlet listing the counseling services that were available. According to the students, this was the first time they received the pamphlet and were informed that counseling services were available to them. The students stated that the information that was provided to them at this meeting was helpful but that it should have been given to them earlier. Once they received the information, some of the female student employees contacted the student health center for counseling services and met with a staff member from an off-campus community agency (listed in the Sexual Misconduct Information pamphlet) that assists victims of sexual harassment and assault.

On December X, 2015, two more female student employees came forward with sexual harassment allegations against the Respondent. One student told the Title IX Coordinator and the HR Director that the Respondent inappropriately touched her. The other student told the two administrators that the detective showed her pictures taken by Respondent of female students changing in the dressing area for the cafe. One of the pictures showed her without her blouse on.

On December X, 2015, three students informed the director of the health center that they were having difficulty preparing for their final exams and keeping up with their classes because of the stress they were experiencing due to the situation in the bookstore. The HR Director informed OCR that the College provided accommodations for them by allowing them to take their final exams at a later date. In addition, the College assisted one student with financial aid issues when that student dropped a class, due to stress. OCR spoke to these students and they confirmed that the accommodations were helpful, but they also stated that their grades still suffered from the stress of the experience.

On December X, 2015, based on concerns expressed by students about the XXXXXXXXXXXX XXXX, the College issued a written directive to XXX XXXX to stay away from the bookstore/café and to not have any contact with the student employees.

On or about December XX, 2015, the police department returned the Respondent's work computer to the College but would not provide the evidence they retrieved from the hard drive. As a result, the College needed to hire a criminal forensic expert to access the photos stored in the computer. The expert picked-up the computer on December XX, 2015.

On December XX, 2015, another student employee came forward and notified the Title IX Coordinator and the HR Director that the Respondent flirted with female students and inappropriately touched her. She also stated that the police department showed her a video taken by the Respondent of her undressing the in dressing area of the café.

On January XX, 2016, the forensic expert provided the College with some pictures that were retrieved from the hard drive. On January XX, 2016, Respondent was arrested and arraigned on 19 misdemeanor counts involving invasion of privacy related to students and other not related to the College. Based on his arrest and incarceration, the College placed him on unpaid leave status. Students informed OCR that they only learned of the arrest from watching the news and from reading the local newspaper.

On January XX, 2016, the Title IX Coordinator met with some of the student employees to give them an update on the investigation and to provide further counseling services. On February X, 2016, the College placed the Respondent on unpaid leave and served him with a notice of proposed disciplinary action (dismissal) and advised him of his due process rights.

On February X, 2016 the College sent a letter to the student employees who were interviewed, updating them on the investigation and about services that are available to them. On February



X, 2016, the forensic expert delivered the rest of the pictures that were stored on the Respondent's work computer. On February XX, 2016, the Title IX Coordinator, HR Director, and the VP of Student Services met with some of the student employees to provide an update on the investigation and notify them of Respondent's arrest.

On February XX, 2016, the Respondent pled no contest, was sentenced to over 200 days in jail, five years' probation, required to register as a sex offender, and was ordered to stay away from College. On March XX, 2016, the Board of Trustee terminated the Respondent from his position.

On March XX, 2016, the HR Director completed the College's investigation. The investigation concluded that the Respondent engaged in sexual harassment and that his conduct was sufficiently severe and pervasive to create a sexually hostile environment, which effectively denied the victims participation in or the benefits of any educational program or activity. The College found that the Respondent flirted with female students, inappropriately touched them, and made sexually suggestive statements over a period of time.

The investigative report also stated that the College's forensic expert retrieved hundreds of photo from the hard drive. A vast majority of the photos appear to be taken from his home, but there were numerous photographs taken up the skirts of various female students. Many of the images depict female legs, underwear, and breasts. The College also found pictures of females who appeared to be in the process of dressing and undressing in the café dressing room. Based on the information provided by the police department, the College was able to identify five students and two employees of the bookstore in the pictures or videos. Although it is not clear exactly how long Respondent engaged in such behavior, the College's investigative report states that he sexually harassed a current employee of the bookstore five years ago when she worked there as a student. On the same day, the College sent a letter to all of the students and employees of the bookstore who came forward with allegations against the Respondent summarizing the results of the investigation.

On April X, 2016, the Title IX Coordinator and the Director of Fiscal Services (who oversees the bookstore) held a mandatory sexual harassment training for all of the student and staff members of the bookstore and café. The training covered the College's procedures to address sexual harassment and sexual assault complaints, provided the resources to on and off campus counseling services, and provided a summary of the outcome of the College's investigation. The College also had a staff member from a non-profit agency, which provides counseling services to sexual assault victims, available in another location so that students and staff from the bookstore/café could go and schedule counseling services as necessary. Students OCR spoke to stated that the information was helpful, but should have been provided earlier. One student, who was not one of the reporting students, contacted OCR and felt that all of the student employees at the bookstore should have been notified that the College was conducting an investigation into the matter. This student stated that she was concerned that she may have been depicted in the photographs.

During the investigation of the case, students expressed concern that a friend of the Respondent would be returning to the bookstore as the XXXXXXXXXXXXXXXXXXXX in June of 2016, in part because they became aware that he attended Respondent’s criminal hearings to support him and posted that he was doing the same on Facebook. OCR also received another posting dated March XX, 2016 that shows the in-coming XXXXXXXXXXXXXXXXXXXX “sharing” a photo of another person with the caption “**WHAT YOU DO AGAINST PEOPLE WILL COME RIGHT BACK ATCHA. IT’S CALLED KARMA[.] BE CAREFUL HOW YOU TREAT PEOPLE**” [emphasis included in the original]. Students who saw this posting stated they were concerned this post was intended to convey that the in-coming XXXXXXXXXXXXXXXXXXXX would try to find out who reported the Respondent and retaliate against them.

In response to the concerns from Students regarding retaliation by XXXXXXXXXXXXXXXXXXXX and supervision by Respondent’s friend, the College informed OCR that the in-coming XXXXXXXXXXXXXXXXXXXX would not have supervisory authority over the student employees and it moved the XXXXXXXXXXXXXXXXXXXX XXXXXXXX XXXXXXXX to a different floor so that students would not see XXX when they visited their academic counselor; the XXXX resigned from XXX position on May XX, 2016.

### **Analysis & Conclusions of Law**

#### *Sexual harassment of a student by an employee*

Under Title IX, sexually harassing conduct by an employee that is sufficiently severe, persistent, or pervasive to limit a student’s ability to participate in or benefit from an education program or activity is prohibited. In this case, based on a review of the College’s own investigative report, interviews with students and staff at the bookstore and others at the College, and a review of documentary evidence, OCR found that the Respondent inappropriately touched female students (including on the thigh, pulling bra straps, touching their hair), photographed female students under their skirts/shorts, made inappropriate sexual comments, and videotaped or photographed at least two female students undressing in the dressing room. OCR determined that the Respondent’s actions were severe because they consisted of unlawful photographing of female body parts without permission and physical touching. OCR also determined that the conduct was persistent, in that the conduct was widespread and well known by students to the extent that they advised each other not to wear skirts or shorts, and it occurred for as many as five years.

Three of the students OCR interviewed also stated that they were unable to concentrate on their studies after they witnessed the Respondent photographing a female student under her skirt during their shifts because they were scared as to what he would do to them for witnessing his actions and they were upset that they may be targets of his sexually harassing actions. Other students reported to the College that their studies were impacted and that the stress of the incidents caused them to fall behind. Thus, OCR determined that the Respondent’s sexually harassing conduct was sufficiently serious to deny or limit a student’s ability to participate in or benefit from the program. In addition, the Respondent engaged in this conduct while carrying out his responsibilities in the bookstore for a number of years, and the

College did not provide regular or mandatory training to its employees, so that they had sufficient notice of Title IX's requirements and how to report violations. Therefore, OCR concluded that the College was responsible for the Respondent's discriminatory conduct whether or not it had notice of his actions, during the time he engaged in such behaviors, which based on the College's investigation may have been as long as five years.

OCR also determined that the student employees, who reported the Respondent to the College, continued to be affected by the sexually hostile environment because the College failed to provide timely interim relief during the month of November. The students told OCR that they needed counseling services after coming forward with their allegations and after meeting with the detective in November, but did not receive information about counseling services until December X, 2015. The students also stated that their anxiety was compounded by the fact that the College did not update them on what was happening with their case until December X, 2015, when the HR Director and the VP of Student Services met with some of the student employees and told them that the Respondent would not be returning, that the College was looking into the matter, and that counseling services were available. Thus, OCR determined that the College's failure to promptly provide this information and such services subjected the students to a continuing hostile environment.

After the December X, 2015 meeting, OCR found that the College did take appropriate interim steps to assist the student employees. The College provided accommodations to students, such as postponement of exams, assistance with financial aid, and counseling services. In addition, the College updated the reporting student employees through meetings on January XX and February XX, 2016 and by letter on February X, 2016. The College also promptly dismissed the Respondent from his position. Further, once the College was informed that some of the reporting and impacted students did not feel comfortable accessing the XXXXXX office and academic counselors because of concerns about the location of XXXXXXXXXXXX XXXXXX XXXXXX and whether XXX would learn they had reported the Respondent's actions, the College moved XXX XXXXXX to another floor so that XXX was no longer visible to the students when they were entering and exiting the academic counseling office. The College also instructed XXX not to go to the bookstore or café.

The College also took responsive action related to concerns raised by Students that the Respondent's friend who publicly supported him at his criminal hearing; in this regard, the College informed OCR that the individual will not have managerial duties over the student employees and, as part of the resolution agreement entered to in this matter, the College will monitor the environment of the bookstore by providing student employee of the bookstore and café with anonymous written surveys.

#### *College's Responsive Action*

The complaint about the alleged sexual harassment was reported by students on October XX, 2015. The investigation, however, was not completed until March XX, 2016, five months (154 days) after the College was notified about the allegation. This exceeded the 90 day timeline that is included in the College's Grievance Procedures as AP 7101. However, OCR confirmed that

the detective instructed the College to not begin interviewing witnesses until he completed his investigation. The investigative report showed that the interviews were completed by December XX, 2015; however, the College was unable to complete the investigation until the College's forensic expert was able to retrieve all of the photographs on February X, 2016. From that date, it took the College another 50 days to complete the investigation and issue a letter of findings to the complainants on March XX, 2016.

OCR understands that the College may have wanted to wait until it learned of the outcome of the criminal proceeding before finalizing its investigative report and the letter of finding. However, because the criminal matter was resolved on February XX, 2016 (Respondent plead no contest to the misdemeanor charges), and the College had all of the evidence it needed to reach its conclusion once the forensic expert provided the second set of pictures to the College on February X, 2016, OCR could not find a reasonable justification for the College's failure to complete the report earlier than March XX, 2016. The College had ample evidence as of February X, 2016 to find that the Respondent had violated AP 7102.1 (Prohibition of Sexual Harassment). The students interviewed by OCR also stated that the delay in receiving a resolution caused them further harm due to the uncertainty regarding the outcome and whether the College was taking their concerns seriously and moving forward with the investigation.

In addition, OCR noted that the College's report included reference to when the Board of Trustees terminated the Respondent from his employment on March XX, 2016. This information should not have delayed the College in finalizing its report as it was not necessary to determine whether the Respondent engaged in sexually harassing conduct or created a hostile environment and to provide a remedy for the student employees. For these reasons, OCR concluded that the investigative report and the letter of finding were not completed in a prompt manner.

OCR also reviewed the investigative report issued by the College, which included the interview notes that were conducted as part of the investigation. OCR found that the College interviewed 10 female student employees, one male student employee, and one employee from the café. In reviewing the report, OCR concluded that the investigation was both impartial and thorough. OCR also interviewed four of the students who were part of the College's investigation and determined that their account of what took place was documented accurately and thoroughly in the report. OCR also found that the College used the proper legal standard in making its findings under Title IX. For this reason, OCR concurs with the College's determination.

One concern that OCR noted was that the report did not include a summary of the College's interview with the Manager. Although, the testimony of the Manager would not have changed the College's conclusions, since this witness continues to hold and held a managerial role at the bookstore and cafe, and was a responsible employee throughout much of the time when the Respondent worked at the bookstore, his interview is important to understanding why the conduct was not discovered, reported and addressed sooner and what actions may be needed to ensure that something of this nature does not occur again.

Related to OCR's finding of non-compliance regarding the failure to provide a prompt investigation, OCR further found that no notice was provided to any of the affected students about the delay or reason for the delay. The College must update affected students and complainants on the status of the investigation at regular intervals, particularly when the investigation will not be promptly completed. Students informed OCR that from October XX, 2015 to December X, 2015 they did not know the status of the investigation and believed that the College was not looking into their allegations. Although the College sent a written update regarding the investigation on February X, 2016 (101 days after the filing of the complaint) and a letter dated March XX, 2016 (154 days after the filing of the complaint) containing a summary of the findings to those who came forward with allegations against the Respondent, the students told OCR the failure to provide an update sooner contributed to a hostile environment, particularly as they were feeling anxious and scared after police officers came to the bookstore where they were working in November. For the aforementioned reasons, OCR concluded that the College's response did not comply with Title IX and its implementing regulations.

#### *Notice of Nondiscrimination*

OCR also concluded that the College failed to provide adequate notice of its nondiscrimination policy as required by at 34 C.F.R. § 106.9. Although the College included information about the Title IX Coordinator and the general prohibition against discrimination and sexual harassment in its catalog, schedule of classes and on its website, the notice was not distributed in the manner required by the regulations, on a continuous basis, and was not effective in reaching students and employees. Five students and one former student OCR interviewed stated that they were unaware that the College had a Title IX Coordinator and knew nothing about the College's grievance procedures to address allegations of sexual harassment or assault when they first came forward with the allegation. The bookstore employees also stated that they did not know that sexual harassment complaints should be reported to the Title IX Coordinator. Information about sexual harassment/assault or contact information of the Title IX Coordinator is not posted on campus and is hard to find on the College's website. The College also determined through its own investigation that the Respondent has been sexually harassing female students and creating a sexually hostile environment for at least five years. Had the students been informed about the Title IX Coordinator and the College's nondiscrimination policy in a continuous manner as required, students may have come forward sooner to report the Respondent.

#### *Title IX Coordinator*

OCR found that, pursuant to 34 C.F.R § 106.8(a), the College properly designated a Title IX Coordinator, here the Manager of HR and Staff Diversity. The College also designated the HR Director to conduct investigations into sexual harassment and assault complaints. In this case, the HR Director conducted the College's investigation and prepared the March XX, 2016 Investigative Report. Based on OCR's interviews with the HR Director and the training that he has received, OCR found that he has adequate training to handle sexual harassment complaints

and is knowledgeable about the College's grievance procedures and confidentiality requirements.

OCR found, however, that the College was not in compliance with Title IX in that it did not effectively provide the Title IX Coordinator's contact information to all of its students and employees. Although the College included the Title IX contact information in its schedule of classes, catalog, and website, when this issue was first reported to HR on October XX, 2015, as discussed above, none of the students and bookstore employees interviewed by OCR were aware that the College had a Title IX Coordinator, what this person's role was, or how to contact the Coordinator. As a matter of technical assistance, OCR recommends that the College clarify how the Director and HR Manager work together on investigations and how their responsibilities will be divided and who is ultimately responsible for ensuring oversight and coordination related to Title IX compliance.

#### *Grievance procedures*

As part of its investigation, OCR reviewed all of the College's grievance procedures and concluded that they do not comply with 34 C.F.R. § 106.89(b). Among other things, the procedures do not state that parties have an equal opportunity to present witnesses and relevant evidence during the investigation, the timeline for completion of the investigation for formal complaints is 90 days, exceeding the 60 day recommended timeframe, and there are no designated and reasonably prompt timeframes for major stages of the grievance process. In addition, the procedures do not state that the accused will also receive notice of the outcome of the complaint and do not provide for equal rights for the respondent with respect to the appeal process. The procedures do not include assurance that the College will take steps to prevent the harassment from recurring and correct the discriminatory effects on the complainant and other as appropriate.

Based on the facts in this case, OCR also found a violation based on the College's failure to state that retaliation is prohibited and to provide protections against retaliation for reporting students and those interviewed as part of the College's investigation. Here, the students and staff interviewed by OCR expressed concern that they would be retaliated against for coming forward and in a few instances noted that they were concerned that they might lose their jobs if they reported the sexually harassing behavior. In addition, the College's policies fail to designate and explain the responsibilities of employees and staff of the College to report sexual harassment and assault. In this case, the failure of the policies to provide such information and the lack of training was stated as a reason that contributed to the delay in reporting.

#### **Conclusion**

This concludes the investigation of this complaint. To address the issues alleged in the complaint, the College, without admitting to any violation of law, entered into the enclosed Resolution Agreement which is aligned with the complaint allegations and the findings and concerns raised based on OCR's investigation. As part of the Resolution Agreement, the College agreed to:

- 1) revise its administrative procedures related to sexual harassment and distribute the new procedures and its notice of nondiscrimination through multiple means, including through a link on the homepage of its website;
- 2) post a summary of the relevant sexual harassment and violence procedures, the notice of nondiscrimination, and the Title IX Coordinator's contact information in areas clearly visible to students and staff members and in locations required by 34 C.F.R. § 106.9, including through an addendum to the College Catalog for the 2016-2017 school year, the Schedule of Classes for the spring of 2017, and the Employee and Staff Manual for the 2016-2017 school year;
- 3) provide an annual sexual harassment and sexual violence training to all faculty, adjunct faculty, and classified staff employees;
- 4) provide regular mandatory training to all new students on sexual harassment and sexual assault and annual online trainings to continuing students;
- 5) provide student employees at the bookstore and café with a written anonymous survey to assess: a) whether the work environment is free from prohibited sexual harassment, sexual violence and retaliation; b) gauge the students' comfort with reporting such prohibited conduct; and c) identify potential barriers to reporting such prohibited conduct, if any, and take appropriate and responsive actions based on the results of the survey;
- 6) provide a copy of its March XX, 2015 letter to all students employed at the bookstore and café since October of 2009 and any new student victims who come forward who did not receive a copy and include information about the range of other remedies, such as academic support, that are available for current impacted students; and
- 7) provide OCR with any complaints filed by students during the 2016-2017 school year that is related to the Respondent or any other bookstore and cafe employee after the execution of the Resolution Agreement and the College's resolution of such complaints.

This concludes OCR's investigation of the complaint and should not be interpreted to address the College's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. OCR is closing the investigation of this complaint as of the date of this letter, and notifying the Complainants concurrently.

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.

Please be advised that the College 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 individual may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives 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 personal privacy.

When fully implemented, the resolution agreement is intended to address all of OCR's compliance concerns in this investigation. OCR will monitor the implementation of agreement until the College is in compliance with the statute and regulations at issue in the case.

OCR thanks you and Dr. Robert Sammis for your cooperation and assistance in resolving this case. If you have any questions regarding this letter, please contact me at (415) 486-5555.

Sincerely,

/s/

James Wood  
Team Leader

cc: Dr. Robert Sammis  
Director of Human Resources