



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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SAN FRANCISCO, CA 94105

REGION IX
CALIFORNIA

February 9, 2016

Fardad Fateri, Ph.D.
International Education Corporation
16485 Laguna Canyon, #300
Irvine, California 92618

(In reply, please refer to case no. 09-15-2450.)

Dear Dr. Fateri:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against UEI College Riverside Campus (College). The Complainant alleged that the College discriminated against him on the basis of sex.¹ Specifically, OCR investigated the following issues:

- (1) Whether the Complainant was subjected to sexual harassment by a College Instructor, and whether the College failed to respond appropriately and effectively to internal complaints he filed; and
- (2) Whether the College has designated a Title IX coordinator, provided proper notice about the coordinator, and adopted and published grievance procedures providing for the prompt and equitable resolution of student complaints of discrimination based on sex.

OCR investigated the complaint under the authority of Title IX of the Education Amendments of 1972 (Title IX) and its implementing regulation. Title IX prohibits discrimination on the basis of sex in education programs and activities operated by recipients of Federal financial assistance. The College receives funds from the Department and is subject to Title IX and the regulation.

OCR gathered evidence by conducting interviews and reviewing documents and other information provided by the Complainant and the College. Prior to OCR completing its investigation relating to the College's Title IX coordinator and notice about the coordinator, the College voluntarily agreed to address the areas of concern identified by OCR. After careful review of the information gathered during the remaining

¹ OCR previously provided the College with the identity of the Complainant, and we are withholding names from this letter to protect personal privacy.

investigation, we concluded with respect to issue #1, and the grievance procedure portion of issue #2, that the evidence supports a conclusion of noncompliance. The legal standards, facts gathered, and the reasons for our determinations are summarized below.

Issue 1: Whether the Complainant was subjected to sexual harassment by a College Instructor, and whether the College failed to respond appropriately and effectively to internal complaints he filed.

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. Colleges are responsible under Title IX and the regulations for providing students with a nondiscriminatory educational environment. Sexual harassment of a student can result in the denial or limitation, on the basis of sex, of the student's ability to participate in or receive education benefits, services, or opportunities.

Colleges provide 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.

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 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, and remedy the effects of the harassment on the student who was harassed. The college must also take steps to prevent the harassment from recurring, including disciplining the harasser where appropriate. A series of escalating consequences may be necessary if the initial steps are ineffective in stopping the harassment.

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 any student reports

of harassment. The college also should take steps to prevent any retaliation against the student who made the complaint or those who provided information.

Factual Findings

The following facts are relevant to OCR's analysis.

- The Complainant enrolled January X, 2015 in the College's Dental Assistant Program (Program). He stated to OCR that on at least three occasions—including once in class on February XX, 2015—when he was speaking with one of his course instructors (the Instructor), the Instructor would either ask him about his "friend" when referring to another student in the same Program who the Complainant told OCR was his "girlfriend," or would correct the Complainant after he referred to this student as his "girlfriend" by telling the Complainant the student was the Complainant's "friend."
- The Instructor stated to OCR that she never asked the Complainant about the other Program student, and never corrected the Complainant when he referred to this student as his "girlfriend." All of the other evidence collected by OCR supported the Instructor's statements.
- The Complainant stated to OCR that on February XX, 2015, while working with another student, he asked the Instructor a question, and that the Instructor took a dental instrument in her hand and said to the Complainant, "Your girlfriend isn't here, and you are going to be doing this operation here, now," while she was making a hand gesture with the dental instrument that simulated male masturbation. He stated that he asked the Instructor why she did that, and that the Instructor put her head down, said she was sorry, and promised not to do it again. He stated that he became angry, raised his voice, and that the Instructor told him to calm down and sit down, and laughed at him. He stated that he left the classroom. After leaving the classroom, the Complainant stated that he first met with the Program Director, then saw and spoke briefly with a previous instructor, and then met with the Riverside Campus Executive Director, followed by a meeting with the Director of Education. He stated that he told each of these College employees that he had been sexually harassed by the Instructor. Statements by the Executive Director and the College Director of Education written around the time of the incident noted that the Complainant was upset during their meeting, and that he told each of them that he was sexually harassed by the Instructor.
- The Complainant stated that during the February XX, 2015 meeting with the Executive Director and the Director of Education, he asked for a complaint form to use to complaint about sexual harassment, and was sent by the Executive Director to the Director of Education. He stated that he did not receive a complaint form from the Director of Education, but was given a Change of Class form on which to write his complaint, but that he did not write his complaint down. He stated that he

requested that the police be called, and that when they arrived, they asked him to leave the College campus, and he left.

- The Instructor stated to OCR that on February XX, 2015, the Complainant was working in class with another student at a dental station. She stated he asked her a question about how to hold a dental instrument, which she said she demonstrated. She stated that the Complainant became angry and told the Instructor that she had contaminated his work area, and was wrong. She stated that when she tried to explain to the Complainant that the setting was a training and academic one, making it appropriate for her not to wear protective gloves, the Complainant would not allow her to explain, and became angry. She stated that the Program Director, who had entered the classroom, asked the Complainant to leave the classroom with her. She stated that when the Complainant returned later that class session to the classroom, he asked for approval from her on the task he was performing before he left the classroom, and that she informed him that she could not provide it because he had not completed the task. The Instructor denied making any comment to the Complainant about his girlfriend, or making a hand gesture that simulated male masturbation with the dental instrument.
- Witnesses described to OCR that in the classroom on February XX, 2015, the Complainant and another student were standing side-by-side practicing dental procedures in a practice space designed to simulate a dentist's office, complete with instruments, a dentist chair, and a model for a patient. The other student working with the Complainant was practicing the role of the dentist, and the Complainant was practicing the role of the dental assistant. The Instructor approached the Complainant and student to observe, and then when the Instructor began to explain and demonstrate the proper use of the dental instrument, the Complainant suddenly became upset and started yelling. No witness heard the Instructor make any comment to the Complainant about his girlfriend, or make any gestures using the dental instrument which simulated male masturbation.
- On March X, 2015, the Complainant sent correspondence to the College that explained he had been sexually harassed by the Instructor, and requested forms and information on how to file a formal complaint of sexual harassment.
- On March XX, 2015, the Complainant filed pro se a complaint in Riverside Superior Court alleging emotional distress against EUI's parent corporation, and included a claim of sexual harassment against the Instructor, seeking compensatory and punitive damages of \$5 million. On March XX, 2015, he dismissed his lawsuit without prejudice.
- The College stated that the Complainant visited IEC's corporate office on July XX, 2015, and spoke with a representative. The Complainant stated to OCR that he asked the corporate representative for a complaint form to allege sexual harassment by the Instructor. The College stated that the representative informed the

Complainant that he could submit a complaint through the "Answer Program." The Complainant filed a complaint using the Answer Program that day, and received a response August X, 2015 which requested a date to schedule a discussion about his concerns. The Complainant suggested August Xth as a meeting date, but when the Answer Program responded by asking to schedule a telephone call, he declined, stating that he wanted either email, or a meeting in person because he wanted privacy. The College reported to OCR no further contact between the Complainant and the Answer Program.

- In response to OCR's request to the College for information, including documentation, about the College's response to each of the Complainant's complaints of sexual harassment, the College provided OCR no documentation that it conducted an investigation, reached a finding or determination about the Complainant's complaints, or communicated by written notice to the Complainant the outcome of his complaints. The College's Senior Vice President of Student Finance stated to OCR that the company's Chief Operating Officer and other company staff met with and communicated with the Complainant, including a meeting after the Complainant dismissed his Riverside County Superior Court claim. During this meeting, the Senior Vice President of Student Finance stated that the Chief Operating Officer informed the Complainant that he had already investigated the Complainant's concerns, and that he had concluded the Complainant had no valid legal claims against the College. The meeting concluded with a discussion between the Chief Operating Officer and the Complainant about settlement of the Complainant's concerns.
- The Instructor stated to OCR that she had never been interviewed or contacted by anyone at the College or the parent company, including by the Answer Program, about the Complainant's allegation of sexual harassment, and other witnesses interviewed by OCR also said they were not contacted or interviewed.

Analysis

Alleged Sexual Harassment

The Instructor denied the Complainant's allegation, and no other witness heard the Instructor make any comment to the Complainant about his girlfriend, or observed the Instructor make any gestures using the dental instrument which simulated male masturbation. OCR found there was no other evidence to support the Complainant's allegation of sexual harassment by the Instructor. Thus, there is insufficient evidence to support a conclusion of noncompliance with Title IX, and its implementing regulation regarding this issue.

The College Response to Complainant's Complaints

Where the allegations filed with OCR have been investigated through a recipient's internal grievance procedures, OCR first thoroughly reviews all documentation of the recipient's investigation and resolution of the complaint to determine whether the recipient provided a resolution and remedy using legal standards and a process that meet Title IX's requirements. If OCR finds that that the recipient has not met these requirements, OCR will often conduct its own independent investigation. In this case, OCR gathered evidence regarding the College's response through interviewing the Complainant, the Instructor, and other witnesses, and reviewing documents and records submitted by the Complainant and the College.

The College provided no evidence that it conducted an investigation of the Complainant's allegation, and it failed even to determine what occurred so that it could respond appropriately after the Complainant told several employees on February XX, 2015 that the Instructor sexually harassed him. Because it never interviewed the critical witnesses to the alleged sexual harassment, even after it received the Complainant's written March X, 2015 sexual harassment complaint, it did not conduct an adequate investigation (or find out what happened), or reach a finding or notify the Complainant of a finding. Therefore, OCR found the College's responsive action was not prompt, thorough, or effective, which is sufficient evidence to support a conclusion of noncompliance with Title IX, and its implementing regulation regarding this issue. Because OCR investigated the underlying sexual harassment allegations, and found insufficient evidence that the Instructor sexually harassed the Complainant, OCR is not requiring the College to conduct a separate investigation or issue a separate written decision to the Complainant.

Issue 2: Whether the College has designated a Title IX coordinator, provided proper notice about the coordinator, and adopted and published grievance procedures providing for the prompt and equitable resolution of student complaints of discrimination based on sex.

Legal Standards:

Title IX Coordinator

The regulations, at 34 C.F.R § 106.8(a), require that recipients 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 recipients notify all of its students and employees of the name (or title), office address, and telephone number of the employee(s) so designated. In addition, recipients must notify all students and employees of the email address of the Title IX Coordinator(s) and include complete and current information about the Title IX Coordinator on its website. The recipient must ensure that employees designated to serve as Title IX coordinators have adequate training or experience in handling sexual harassment complaints and in the operation of the recipient's grievance procedures. All persons involved in implementing a recipient's grievance procedures, including investigators, must have training or experience in handling complaints of sexual

harassment, as well as training in the recipient's grievance procedures and applicable confidentiality requirements. If a recipient designates more than one Title IX coordinator, the notice should describe each coordinator's responsibilities and one coordinator should be designated as having ultimate oversight, while the others should have titles showing that they are in a deputy or supporting role to the senior coordinator. The Title IX coordinators should not have other job responsibilities that may create a conflict of interest, such as serving as general counsel or a disciplinary hearing board member.

Grievance Procedures

In addition, the Title IX regulations establish procedural requirements that are important for the prevention and correction of sex discrimination, including sexual harassment. These requirements include issuance of a policy against sex discrimination (34 C.F.R. § 106.9) and 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)). The regulations also require that recipients designate at least one employee to coordinate compliance with the regulations, including coordination of investigations of complaints alleging noncompliance (34 C.F.R. § 106.8(a)).

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

Notice of Nondiscrimination

A recipient must post a notice of nondiscrimination stating that it does not discriminate on the basis of sex and that questions regarding Title IX may be referred to the recipient's Title IX coordinator or to OCR. The notice must be included in any bulletins, announcements, publications, catalogs, application forms, or recruitment materials distributed to the school community, including all applicants for admission and employment, students and parents or guardians of elementary and secondary school students, employees, sources of referral of applicants for admission and employment, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient.

In addition, the recipient must always notify students and employees of the name, office address, telephone number, and email address of the Title IX coordinator, including in its notice of nondiscrimination.

Title IX Coordinator

Factual Findings

The following facts are relevant to OCR's analysis.

- The College stated to OCR that the Riverside campus is led and managed by an Executive Director, who has overall leadership and oversight responsibility of the campus, including ensuring compliance with all applicable laws. It described the Executive Director, with the support of his/her team, as being responsible for investigating sex discrimination complaints.
- The College also identified, as a source of information regarding the College's Title IX Coordinator, its Student Complaint/Grievance Procedure (Procedure), located in its School Catalog. This Procedure instructs student complainants to bring complaints to the instructor, if appropriate, then to the Director of Education who will investigate, and make a resolution. The procedure does not explicitly state that the Director of Education is a Title IX coordinator.
- The College's School Catalog also contained the College's Statement of Nondiscrimination, which notifies students that all inquiries or complaints about sexual discrimination should be directed to the "Campus Administrator." The Campus Administrator is not identified in the Statement of Nondiscrimination, or in any other document submitted to OCR by the College, as a Title IX Coordinator.
- The College's Employee Handbook contains the Anti-Discrimination, Harassment and Retaliation Policy, which identified the company's Title IX Officer as its Director of Employee Relations, and provided the Director of Employee Relations' office address and telephone number.

Analysis

Based on the facts gathered to date, OCR had significant concerns about whether the College has designated a Title IX coordinator(s) who have received adequate training and are knowledgeable about Title IX coordinator responsibilities. Moreover, the information provided by the College is confusing because it identifies in the employee handbook only the Director of Employee Relations as its Title IX Officer, without clarifying whether the Director of Education and the Campus Administrator, who are identified in other documents available to students as responsible for investigating and handling inquiries about sexual discrimination complaints, are employees who also have responsibilities as Title IX coordinators. Prior to concluding its investigation and to address the issues alleged in the OCR 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 information obtain by OCR during its investigation.

Notice of Nondiscrimination

Factual Findings

The following facts are relevant to OCR's analysis.

- Regarding the College's response about its policy prohibiting sex discrimination, and its description with documentation of how it has disseminated its policy to students and faculty/employees, the College provided OCR a copy of its School Catalog's Statement of Nondiscrimination. While the College's Statement of Nondiscrimination states that the College does not discriminate on the basis of sex, and states that all inquiries and complaints should be directed to the "Campus Administrator," it does not include any contact information for the Campus Administrator, or for any other employee who might be the College's Title IX coordinator. It also does not provide any information about filing with OCR as an alternative.
- The Anti-Discrimination, Harassment and Retaliation Policy, Employee Handbook has a nondiscrimination statement, and the Complaint Procedure, Employee Handbook portion of that policy identifies the Company's Title IX Officer as the Director of Employee Relations.
- The College's Policy on Sexual and Other Unlawful Harassment, a separate document it provides to its employee, does not contain a general statement of nondiscrimination on the basis of sex but does contain a statement against sexual harassment. It directs employees who have been a victim of harassment not to the Campus Administrator or the Executive Director, but to the Human Resources Department and states that the Company will investigate allegations of harassment.

Analysis

The College's notice of nondiscrimination to students is not adequate because while it contains a nondiscrimination statement, to the extent that the Campus Administrator is a Title IX coordinator, it does not contain the Campus Administrator's office address and telephone number as required by the Title IX regulation. It is also missing the Title IX coordinator's email address; the College indicated to OCR an interest in addressing this deficiency during OCR's investigation. The Resolution Agreement will address these deficiencies and also the requirements for continuous notice of the revised nondiscrimination notice in all of the aforementioned publications and to the aforementioned groups.

Complaint Resolution Procedures

Factual Findings

The following facts are relevant to OCR's analysis.

- The minimal language used in the College's Procedure does inform students to bring complaints to an instructor, who then notifies the Director of Education if a student's issue is not resolved. The Procedure further provides that the Director of Education will investigate and assess the student's issue and make a resolution, without providing any other details about an investigation. After the Director of Education makes a resolution, or if the issue is not resolved, the Executive Director is notified. The Procedure concludes by instructing an unsatisfied student to appeal to the company's Answer Program, or the College's accrediting agency.

Analysis

The College's grievance procedure for the resolution of student complaints of sex discrimination, including harassment, fails to adequately include the elements necessary or recommended to provide for the prompt and equitable resolution of complaints. For example, the Procedure describes an investigation but provides no details about the manner in which the investigation will be conducted or its timeframes. It fails to require written notice of the outcome of the complaint, or any assurance that the College will take steps to stop harassment and prevent its recurrence, if appropriate. The lack of adequate procedural information in the Procedure is sufficient evidence to support a conclusion of noncompliance with Title IX, and its implementing regulation by the College regarding this issue.

The College, without admitting any violation of federal law, voluntarily agreed to enter into the enclosed Resolution Agreement with OCR to resolve the complaint. Under the terms of the Resolution Agreement, the College will properly designate either an employee, or employees, as its Title IX coordinator(s), provide training to the coordinator, revise its notice to comply with Title IX regulation and OCR policy guidance, and publish the notice as required by the regulations and OCR guidance. It also requires the College to revise its Procedure to be consistent with Title IX regulations and OCR policy guidance, and to train employees, including the Title IX coordinator, involved in resolving sex discrimination complaints on the revised student grievance procedure.

Based on the commitments made in the enclosed Resolution Agreement, OCR is closing the investigation of this complaint as of the date of this letter, and notifying the Complainant concurrently. When fully implemented, the Resolution Agreement is intended to address all of OCR's compliance concerns and violations identified in this investigation. OCR will monitor the implementation of Agreement until the College is in compliance with the Title IX and its implementing regulation, which were at issue in the 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.

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OCR would like to thank the College and the College's counsel for their cooperation during this investigation. If you have any questions regarding this letter, please contact David Christensen, Staff Attorney, at (415) 486-5554, or David.Christensen@ed.gov.

Sincerely,

/s/

MaryBeth McLeod
Team Leader

CC: XXXXX XXXXXXXXX
Corporate Counsel
XXXXX XXXXXXXXX
Senior Vice President & General Counsel (via electronic copy only)

Enclosure